

CHANGING MINDS: DEVELOPMENT, DISCONTINUITY, AND THE  
HALLMARKS OF LYSIANIC PERSUASION IN LYSIAS 1, 3, 7 AND 10

A Dissertation

Presented to the Faculty of the Graduate School

of Cornell University

in Partial Fulfillment of the Requirements for the Degree of

Doctor of Philosophy

by

Samuel Marius Kurland

May 2014

© 2014 Samuel Marius Kurland

# Changing Minds: Development, Discontinuity and the Hallmarks of Lysianic Persuasion in Lysias 1, 3, 7 and 10

Samuel Marius Kurland, Ph. D.

Cornell University 2014

My dissertation closely reads four forensic speeches attributed to Lysias and argues that the speaker of each contradicts himself in ways that support his rhetorical goals, changing his own mind in the process of, and as a means of, inducing corresponding changes in the mind of the listener. The similar ways in which the four speeches do this are the title's "hallmarks of Lysianic persuasion:" discrepancies between the opening of a speech and its close; the strategic distribution of arguments and disclosures; delaying tactics; and changes in characterization. Lysias 1 transforms its speaker from a gullible cuckold into a clever, serious civic authority, and this transformation drives a larger shift in the speech's handling of law, whereby the roles of juror and defendant are eventually reversed from what they were at the speech's opening. Lysias 3 initially describes the speaker's dispute with Simon as a romantic rivalry; this characterization of their dispute is later rejected as the roles of those involved are redefined. Lysias 7 initially presents its speaker as a retiring figure fearful of the public eye; later he is seen to be an enthusiastic public servant, a change closely linked to his redefinition of the crime of which he is accused. Lysias 10 at first treats the speaker's dispute with Theodotus as an isolated instance of slander; by the speech's close the trial has become primarily an opportunity for the jury to overturn the outcomes of three earlier trials. Previous commentators have assumed, often implicitly, that a Lysianic speaker's objectives and means of achieving them are, or are intended to be, the same from the start of his speech to its close. My close readings show that although the speechwriter does work toward an overarching goal, the parts of a speech are fashioned also with a view to the speaker's momentary, evolving rhetorical needs, and that as those needs change, altered by the speech's own words, so change its tactics and objectives.

## VITA

The author, Samuel Marius Kurland, son of Dr. Jeffrey A. Kurland and Mrs. Roberta F. J. Kurland, was born June 21 1983, in State College, Pennsylvania, where he attended elementary school, secondary school and college. From fall 2001 to summer 2006, he studied Classics and Ancient Mediterranean Studies at the Pennsylvania State University, earning a Bachelor of Arts degree with honors in August 2006. His undergraduate honors thesis examined the relationship between speech, writing and political systems in Herodotus' *Histories*. He attended the Graduate School of Cornell University from August 2007 until December 2013.

## ACKNOWLEDGMENTS

My father was once told by his dissertation advisor, Irvn Devore, that one never finishes a piece of writing; one only abandon it. It is with no small amount of trepidation but deep gratefulness that I abandon this one. In the course of its development I have accrued debts exceeding my ability to enumerate them. I wish to express here my thanks especially to my committee chair, Professor Jeffrey Rusten, who suggested that I pursue the small observation on Lysias 1 that became the kernel of the dissertation, and without whom the project would never have reached completion. Thanks are in order also to the rest of my committee, Frederick Ahl, Pietro Pucci and Hayden Pelliccia; it has been a privilege to work with all of them, and I am honored to call myself their student. It is hoped that the final dissertation has in some way justified the time, energy and insight that all four members of the committee unstintingly offered. Thanks are owed also to my family – Jeffrey A. Kurland, Roberta F. J. Kurland, and Jessica E. Buckland – for everything.

## TABLE OF CONTENTS

Chapter 1: Introduction .....	1
Chapter 2: Lysias 1, “On the Murder of Eratosthenes” .....	31
Chapter 3: Lysias 3, “Against Simon” .....	87
Chapter 4: Lysias 7, “Concerning the <i>Sēkos</i> ” .....	117
Chapter 5: Lysias 10, “Against Theomnestus” .....	144
Conclusion.....	164
Bibliography.....	170

# Chapter 1: Introduction

## Outlining the scholarship

The bulk of modern scholarship that draws on the speeches of Lysias does not actually study the speeches themselves; Lysias' usefulness as a historical source merely ensures that he will be at least footnoted in discussions of, e.g., Athenian culture, politics and law in the Classical period. Out of the scholarship that examines Lysias or his work in itself,<sup>1</sup> the majority is again some variety of historical scholarship. The next largest body of work on Lysias, but a small share overall, is that which treats the rhetorical strategies of particular speeches; these studies, which almost always focus on a single passage or argument, are in some cases joined to textual criticism. Far less numerous even than the rhetorical studies are what we might call the literary studies of Lysias' work. These are so scarce and so disparate in their concerns that one can hardly speak of "literary scholarship" on Lysias (or oratory as a whole for that matter), as there is no field or sub-field to which literary work on the speeches naturally belongs. The (arguably) literary studies of Lysias include Usher (1965) on individual characterization in Lysias; Gagarin (2003) on the importance of storytelling in Athenian law (although this is less a study of Lysias than a study that makes use of him); Porter (2007 [1997]) on comic *diēgēsis* in Lysias 1 and the features of the speech that, in his view, make the text more likely to be a rhetorical exercise than a speech written for an actual suit; and Wohl (2010) on juridical discourse in Classical Attic forensic oratory. The general outline of 'Lysianic studies,' then, may be traced as follows: historical work is in the majority by a wide margin; work on rhetorical strategies comprises a small minority; and literary work, as a grouping, is essentially non-existent.

The present dissertation is best described as a rhetorical-literary study,<sup>2</sup> a close reading of four of Lysias' forensic speeches with a view to their common patterns of arrangement and approaches to persuasion. The central argument of the following pages is that Lysias' rhetorical strategies unfold partly through moments of discontinuity and self-contradiction: Lysias' speakers contradict themselves in ways

---

<sup>1</sup> Weissenberger's 2003 annotated bibliography lists some 503 works appearing between 1905 and 2000 that treat some aspect of Lysias' life or work.

<sup>2</sup> What I mean by "rhetorical" and "literary" I discuss later in this chapter.



that support their rhetorical goals, changing their own minds in the process of, and as a means of, inducing similar changes in the mind of the listener. Because of the aforementioned dearth of literary work and paucity of rhetorical studies, there exists little scholarship with which mine can converse or argue, with the exception of a few recent commentaries. This is not to say that the dissertation does not contribute to ongoing scholarly debates. It is to say, rather, that there has been almost no debate on the central issues of the dissertation, namely the interpretation of Lysias' speeches, their rhetorical strategies and the artistic and persuasive techniques of their author. The ongoing debate to which the dissertation, as a whole, most directly contributes is a methodological one, namely that concerned with how classicists read and use Classical Attic oratory.

The following pages represent an initial effort to fill a gap in the secondary literature and thereby show the need for study in an area where historically there has been almost none. Previous commentators have implicitly assumed that a Lysianic speaker's objectives and means of achieving them are, or intended to be, the same from the start of his speech to its close; I argue that although the speechwriter does work toward an overarching goal, the parts of a speech are fashioned with a view to the speaker's momentary, evolving rhetorical needs, and that as those needs change, altered by the speech's own words, so change its tactics and objectives. Previous commentators have, moreover, tended to explain Lysianic rhetorical strategies in terms of either characterization or arguments and proofs; like Wohl (2010), however, I see the rhetoric of a speech also in the themes, motifs and lines of thought that develop without ever being acknowledged. In order to situate my work, it will be helpful to begin by discussing its wider scholarly context: Lysias' reception, some recent work on Greek rhetoric and recent developments in the study of Classical Attic oratory.

### **Dionysius of Halicarnassus, the nineteenth-century handbooks, and criticism of historians' use of oratory**

The antique reception of Lysias – in Plato, Dionysius of Halicarnassus and Pseudo-Plutarch – is in some ways more relevant to my work than most of the modern bibliography, but it will be most

expedient to delay discussion of Plato and Pseudo-Plutarch until later in this chapter; they are useful for discussion of the dissertation itself, less so for examination of Lysias' modern reception. Dionysius cannot be passed over. His critical and aesthetic appraisals of Lysias, still accepted more or less whole cloth, have dominated almost all discussion of Lysias as a writer and literary figure. Dionysius' influence is particularly evident in the nineteenth-century handbooks of Jebb (1876) and Blass (1887), whose discussions of Lysias' literary qualities are in some respects little else than paraphrases of Dionysius; they even structure their discussions as he structures his. Both offer much that Dionysius does not, including guidance on the surviving speeches, the lost speeches, and legal issues; Blass makes insightful observations on, e.g., Lysias' use of the antithesis; and both Blass and Jebb correctly point out that there is greater variation in Lysias' prose style than Dionysius, the Atticist partisan, is willing to admit. Neither goes much beyond their ancient predecessor, though, either in the study of Lysias as a writer or in the interpretation of his work.

Since Jebb and Blass there have been few attempts to expand our understanding of Lysias in these areas. His writing is typically discussed qua writing only in handbooks and in the introductory remarks of commentaries. These discussions, too, tend to defer to Dionysius, often focusing, e.g., on Lysias' skillful use of characterization or the clarity of his prose. As noted above, there is no shortage of scholarship that treats Lysias or makes use of his work (a simple *L'Année philologique* search turns up some fifty-six pages of entries that include 'Lysias' as a keyword). But in most of this work Lysias' speeches are of interest to scholars only with a view to some external historical problem. Ordinarily, as Wohl puts it, "One does not so much read the [oratorical] texts as one reads through them" (Wohl 2010, 6).

It is hardly surprising, then, that the received wisdom on Lysias as a writer has never seriously been challenged. With oratory thought to be of interest only as a historical source, the speeches have been treated largely as data to be mined, not texts to be interpreted. This has had unfortunate side effects. Thus Ober in 1989:

Modern students of Athenian history, when they have used rhetoric for anything beyond mining speeches for nuggets of information regarding events, have often taken a literalist approach, supposing that speeches are a more or less accurate mirror of social and political reality. This has, I think, led to some fairly serious

errors. On the one hand, there is the tendency to take (for example) Demosthenes' description of Aeschines at face value. But perhaps more damaging (because less obviously misdirected) is the assumption that (for example) when wealthy litigants address jurors as economic equals, the jurors must have been wealthy. (Ober 1989, 45-6)

But if these uncritical readings of oratory are lamentable because they damage our understanding of Athenian history, they are equally lamentable because they lead to misunderstanding of oratory itself and sap the speeches of their complexity and interest:

In order to use forensic oratory as a window, however, the historian must render it transparent. He or she salvages the texts' truth by conceding – indeed, accentuating – their rhetoricity, but that rhetoric is denied any density or interest in itself. Instead, it is reduced to an empty instrumentality. It is imagined as a tool manipulated by skilled speakers or as a vehicle of communication between speaker and jury. The text's rhetoric is rendered meaningful, but its meaning lies beyond it, in the wider ideological or cultural structures to which it points. One does not so much read the texts as one reads through them. Excerpting selectively (on the grounds that a cliché is inherently mobile), one creates out of these rhetorical tesserae a mosaic of historical meaning that goes far beyond that contained in any given speech. This mode of reconstruction relies on a functionalist hermeneutics in which all of the speech's linguistic qualities are subsumed within and judged by its ostensible mission to persuade its audience. Only what is normative is persuasive in this context (the implicit reasoning goes), and only what is persuasive is culturally significant. In their instrumentalization of rhetoric, recent historical studies cross paths with the earlier generation of literary readings which, taking their cue from Aristotle's *Rhetoric*, analyzed every trope, argument, or metaphor in terms of its persuasive force. In both cases, the language of the speech is just a means to an end, for the original speaker no less than for the modern historian. To note this is not to invalidate the historiographical use of forensic oratory: looking through the lens of forensic rhetoric, it has exposed to view many fascinating and important new vistas. But in focusing its gaze on those other vistas it frequently renders the texts' rhetorical substance insubstantial and all but invisible. (Wohl 2010, 5-6)

Of course, the Attic orators *were* attempting to appeal to Athenian audiences by catering to the beliefs and views they expected to meet in the assembly and law courts (and which they often shared); understanding those beliefs is key to understanding the rhetoricity of a speech. And with Athenian beliefs and expectations increasingly treated, by the most recent two generations of classicists, as a worthwhile topic for historical inquiry, what the orators say and how they say it has been, to Ober and others, of great interest. Ober himself is hardly guilty of inert, uncritical readings that treat the speeches as 'transparent,' nor would it be entirely true to say that, for Ober, the meaning of a speech lies 'beyond' it: the rhetoric of the speeches, for Ober, not only reflects the historical realities of the radical democracy but also helped to create and sustain them by facilitating cooperation among Athens' elites and masses. Ober's method – studying patterns in the oratorical corpus as possible clues to underlying beliefs and expectations – is sound. But Wohl's criticism is well-taken: Ober's approach – seen also in, e.g., Dover (1974), Davidson

(1998), and Wolpert (2002) – cannot accommodate the nuances of individual speeches or passages taken by themselves, because it assumes a one-to-one relationship between rhetoric and culture. If it is true that Classical Attic oratory has a reputation for being generic or literarily or intellectually uninteresting (Wohl 2010, 4), that reputation must be attributed in part to the way it has been studied: the kinds of questions that oratory’s interpreters have asked about it demand that it be so.

### **Recent work on rhetoric, and Lysias’ place in it**

Bateman complained in 1958 of classicists’ tendency to treat oratory and rhetoric separately (Bateman 1958, ix), a complaint that needs little emendation to be brought into line with the state of the scholarship in 2013; it is unclear to me that the survival of Lysias speeches has had any impact whatsoever on how we write the history of Classical Athenian rhetoric. The separation of oratory and rhetoric, though, is neither as unreasonable nor as thorough as Bateman thought. Antiphon and Isocrates have long received attention in connection with rhetoric – the former as one of the Sophists, the latter as Plato’s intellectual and pedagogical foil. The history of rhetoric during the Classical period, moreover, is often told in terms of theory, not practice. Because most of the Attic orators are practitioners who made no explicit theoretical contribution to the study of the available means of persuasion and whose surviving work shows no implicit interest in rhetorical theory, the historian of rhetoric in Ancient Greece has had little incentive to think seriously about individual speeches. But recent work on Classical Greek rhetoric has challenged theory-only histories, creating space for the study of practices and admonishing us against oratory’s continued neglect.

### **Kennedy’s *Art of Persuasion in Greece* (1963)**

According to Kennedy, “when study of rhetoric began in the fifth century B.C. much of what was said was merely a theorizing of conventional practice” (Kennedy 1963, 35). Kennedy thus takes it as a given that the innovations associated the birth of rhetoric were first and foremost theoretical innovations: Kennedy records the ancient testimony that the art of rhetoric was invented in the second quarter of the

fifth century in Syracuse, where the overthrow of the Syracusan tyrants created a surfeit of litigation and a concomitant need for guidance in forensic rhetoric and public speaking; Tisias and Corax were theoretical innovators who wrote theoretical texts. Kennedy accepts that the sophistic movement was, like the movement in Syracuse, partly the result of civic and social conditions that created a need for eloquence and a sure command of forensic eristics. The sophists taught a kind of “practical philosophy” (27), and thought of themselves as “training statesmen not philosophers (Plato, *Protagoras* 318d5ff. and *Republic* 600c2ff.)” (ibid.), with rhetoric the central pillar of their teaching: “Rhetoric was in no real sense an invention of the sophists, but their speculations helped crystallize its *theories* [my emphasis] and show its significance” (Kennedy 1963, 27). Theory was new, but rhetoric was immanently and inherently Greek:

The circumstances which made the later fifth and most of the fourth centuries a golden age in the history of rhetoric and oratory are fundamentally a complex series of interrelationships between new ideas and old traditions in literature, philosophy and all Greek culture. We must remember that oratory was one of the oldest and most active of Greek traditions, but one which was not self-conscious until the fifth century.

The immediate cause of the greatly increased consciousness of rhetorical techniques in fifth-century Athens was the application of the democratic process on a large scale to legal procedure. (Kennedy 1963, 10)

One has hardly to search Archaic and Classical literature, then, in order to find rhetoric in it or material pertinent to its study. Kennedy can thus present a disparate range of authors, e.g., Aeschylus, Herodotus, Thucydides and Homer, as contributors to, and reflections of, rhetoric’s state of development. But when he reaches Lysias, he offers little more than a paraphrase of Dionysius, referring to the speechwriter’s “two great contributions” (Kennedy 1963, 135) to Greek oratory: the prose style that “was to become the standard of Attic purity and grace three hundred and fifty years later” (ibid.); and *ēthopoia* (Kennedy 1963, 135-8). Surely, if we may look to poets and historians for information about the art of persuasion, the surviving work of one of the Athenian law courts’ most accomplished and admired speechwriters deserves closer, or any, scrutiny.

### **Cole’s *The Origins of Rhetoric in Ancient Greece* (1991)**

Cole defines rhetoric, in what he calls “the narrowest and most conventional sense of the term” (Cole 1991, ix), as “a speaker’s or writer’s self-conscious manipulation of his medium with a view to

ensuring his message as favorable a reception as possible on the part of the particular audience being addressed” (ibid.). Rhetoric so defined, Cole tell us, did not exist prior to Plato and Aristotle, and could not have come into being prior to the fourth century, which is to say prior to the advent of literacy. This is because, he says, language prior to literacy was viewed as clear and unproblematic, with medium conceptually inseparable from content; a formal theory of persuasion and persuasive devices apparently necessitates such a separation and so was impossible under conditions of orality. Until the intellectual revolution that literacy engendered, then, and which Plato and Aristotle apparently brought to fulfillment, we may speak not of rhetoric but rather of “eloquence,” “manners,” and “virtuosity” (ibid.).

Using this framework, the first section of Cole’s history considers “the prerhetorical age” of Greek literature, authors and works prior to Plato and Aristotle, with the intention of showing their non- or pre-rhetorical character. The success of this section of his work is debatable.<sup>3</sup> That of the next section, on the *technai*, is not. Cole swiftly surveys the fragments and testimonia (Cole 1991, 81ff.), and shows that early *technai*, such as the works attributed to Tisias, were almost certainly compilations of examples, “practice and demonstration texts” (*passim*), not theoretical treatises of the sort Kennedy assumes were being written. Theoretical work fell under the heading of *technē* as well, but Cole believes, and makes a convincing case, that it appeared later.

---

<sup>3</sup> Martin 1993, 79-80:

The answer to our unease provided by C.’s chapter on Homer (“Oral Poetry and Oral Eloquence”) will perhaps convince those with a nostalgic bent. C. constructs an “arhetorical” world in which communication is non-problematic and the Muse is daughter of Mnemosyne in the sense of “information retrieval” (p. 34). The shade of Havelock looms large at the edge of this pit. Consequently, C. does not press the evidence as hard as he could. For instance, Telemachus’ remark about the newest song being most popular (*Od.* 1.351-52) is taken at face value as a statement of the epic poet’s prerhetorical urge for novelty. But even within the *Odyssey*, as Pucci and others have seen, Telemachus’ remark is highly ironic: he is a character in an old tale in old poetic language. We do well not to take Telemachus at face value like some early Aristotle. C. cunningly foregrounds all the well-known Homeric passages in which a song is singled out for realistic effect and accurate transmission of fact (*Il.* 2.484-94, *Od.* 8.488-91, *Od.* 12.189-91). But he goes to great lengths to avoid even mentioning the Muses’ “lies” in *Theogony* 27-28, surely a problematizing of language (even though C. quotes *Th.* 32 on the Muses’ ability to tell past and future!). And Odysseus’ verbal ability, thematically related to the Muses’ (cf. *Th.* 27 with *Od.* 19.203), is dismissed by C. as “eloquence” unsuccessful by rhetorical standards since it relies on omission of detail (as in his speech to Achilles in *Il.* 9), rather than “reformulation” to gain acceptance, and, moreover, fails to persuade its hearers.

Cole's literary history of Classical Athens at the end of the fifth and in the early fourth century is considerably less convincing than rewriting of the history of the *technē*. Of Attic prose of this period, he writes,

It is hard to imagine an idiom or style less calculated to please or move an audience, or to make a message more acceptable and more understandable, than those which appear time and again in the orations of Antiphon, the speeches of Thucydides' history, and the largely anonymous or fragmentary remains of the prose of their contemporaries" (Cole 1991, 71).

Attic prose shows "formality, harshness, syntactical regularity, grammatical precision, compactness, neglect of *ēthos*, abstractness, and generality" (Cole 1991, 73) and "is a prose of information and ideas" (ibid.). The typical Attic text

gives the impression of having been composed for "practice and demonstration." It is a model piece devoted to the sort of subject likely to come up for repeated discussion in political, judicial, or epideictic oratory and designed to be useful in as wide a variety of such situations as possible. (Cole 1991, 75)

In the fourth century, however,

a public of hearers was replaced, to a remarkable extent, by a public of readers, and, concurrently, the replacement of the *technē* of the fifth century by the true reading text. The writers of such texts aspired to as total a recreation as possible of the effect of oral communication, and so to an ability to compete for public attention which *technē* never possessed or sought. (Cole 1991, 115)

Cole tells us that "parallel lines of development can be traced in all three of the major prose genres of the period: philosophical dialogue, oratory, and historiography" (Cole 1991, 116). In philosophical dialogues, the Socratic texts provided "a substitute for actual attendance at a debate staged between great masters of dialectic – a means of "showing to the play-loving Athenians pedagogically serious eristic in action" (ibid.).

In oratory, "performance texts composed by professional speech writers (*logographoi*) begin to appear in the last quarter of the fifth century" (ibid.). These "differ in style and manner from the accompanying *technai* in ways one might expect" (ibid.), but "the difference is not as extreme as one would expect" (ibid.):

narrative and argument based on the actual circumstances of the case still play a restricted role; probability and elaborate legal and moral casuistry are developed to a degree that strikes us as odd. It is as if the writing of an actual speech for a client (a practice that was probably newer by a generation or so than the writing of the *technai*) had been embarked upon only out of necessity, for the benefit of those who proved unable to make use of a simple *technē* in order to produce a speech for themselves. The result was a genre that continued to restrict itself to the generalities characteristic of *technē*, even when there was no longer

any need to do so. There may even have been occasions when the actual speech was produced by minimal modification of a *technē* already on hand. (Cole 1991, 116-7)

Much of the above is speculative, subjective, vague and unclear as to the evidence on which it rests. I fail, for instance, to see why only Cole's putatively "harsh" authors should be taken as representative of Attic prose. Thucydides after all warns his readers that they will not encounter in his history a text that tries to please. The warning implies a readership that expects such a text, which in turn implies that such a text will have been more common. Certainly it would be a mistake to accept unquestioningly the testimony of the opening chapters of Thucydides' work, but it seems inescapable that Thucydides was indeed doing something unusual and so does not represent Attic prose in the way Cole believes.

Moreover, Cole seems to think – although he never says outright – that prose after rhetoric shows its character as such through its being capably or pleasingly "rhetorical," which is to say that it will be more appealing and naturalistic than Antiphon and Thucydides, or simply less "harsh." I struggle to find any reason why this should be so, nor any evidence for it in surviving Athenian literature. In short, having dispensed with Kennedy's narrative of rhetoric and his pairing of rhetoric and oratory, Cole has gone further. He has essentially dispensed with late fifth- and early fourth-century Attic oratory as a whole, making it an afterthought to the literary trends he regards – questionably, in my view – as dominant.<sup>4</sup>

### **Schiappa's *The Beginnings of Rhetorical Theory in Classical Greece* (1999), and Lysias' place in the study of rhetoric**

Schiappa goes further in certain ways than Cole. Cole remarks merely in passing that *rhetorikē* is not found prior to its appearance in Plato (Cole 1991, 2) and that until the end of the fourth century it is used only in Plato and Aristotle (ibid.). Schiappa takes the coining of the word to be a more significant development, on the grounds that the creation of the name altered how the thing named was discussed and

---

<sup>4</sup> Cole's dismissiveness becomes even less reasonable when considered in the light of doubts about the authorship of the Lysianic speeches. If the speeches are a collection of works by multiple authors writing at roughly the same time, then their common elements, as reflections of literary convention, make them likelier than Antiphon and Thucydides to be representative of standard Attic prose.



understood: “once named, intellectual practices can become what we can loosely call a discipline, and a common set of issues can be identified as its focus. At the same time, further categorization and specialization occur” (Schiappa 1999, 27); “the creation of a specific vocabulary to describe the workings of language is a constitutive part of the disciplining of *logos*” (ibid.); “Plato seems to have coined – or at least borrowed and defined – the new word *rhetorikē* as part of an effort to limit the scope and popularity of Sophistic teaching, particularly that of his rival Isocrates. However, the term quickly became useful as a means of organizing thought and effort around a specific set of problems – those of being a persuasive rhetor” (Schiappa 1999, 27-8).

Reception of Schiappa’s arguments on the significance of the coining of *rhetorikē* has been lukewarm,<sup>5</sup> and rightly so: given that, until the end of the fourth century, the term appears only in Aristotle and Plato, one must wonder how widely it was disseminated and thus how significant an impact it can have had on rhetoric’s development. Along these same lines, the term *to eikos* in reference to probability, Schiappa points out, does not appear prior to Plato, and

the earliest surviving prose text is that of Herodotus, who wrote in the last third of the fifth century (Waters 1985). The earliest prose texts remain closely wedded to oral patterns of composition by relying on narrative and often employing mythical themes. Gorgias’ *Helen* and Prodicus’ *Choice of Heracles* are innovative prose texts for their time (the late fifth century), but are nothing like the sort of dry academic prose one finds nearly a century later in Aristotle. [...] The idea that Corax or Tisias wrote what later authors would call a “handbook” for teaching Rhetoric along the lines of a *Rhetoric to Alexander* is far-fetched, to say the least. (Schiappa 1999, 37)

Schiappa’s point seems inescapably, inarguably true: Tisias could not have written a theoretical prose treatise on a category of argument that had yet to be named. But as Schiappa himself recognizes, Attic prose before Plato nevertheless shows a striking preoccupation with arguments that can only be called arguments from probability. Early prose writers, it would seem, did not need Plato to give these arguments a name.

If certain elements of Schiappa’s history are debatable, the skepticism on which he bases his work is not: the testimonies of Aristotle and Plato are not sufficient evidence for the construction of a historical

---

<sup>5</sup> For a particularly biting critique, see Prince 2002.

narrative of rhetoric's development. Schiappa is surely right, moreover, to insist on expunging from our histories of rhetoric the four questionable assumptions that, in Havelock's estimation, have guided and hobbled most classical scholarship:

“Greek culture from the beginning was built on a habit of literacy; Greek prose discourse was commonly composed and read at least as early as the Archaic age; the Greek language was built up out of a set of interchangeable parts; Greek thought-forms give expression to a common fund of basic values and concepts.” (Schiappa 1999, 32)

These assumptions are clearly at work in Kennedy's history, where rhetoric is presented as inherent in Greek culture and thought as reflected by its literature. As a corrective, Schiappa proposes rhetorical history based on study of *ipsissima verba* (Schiappa 1999, 10ff. & 33), i.e. individual words and individual works. In the cases of *rhetorikē* and *to eikos*, Schiappa shows well – my complaints above notwithstanding – that we ought not to assume that the exact same concepts can conceptual vocabulary were present throughout the history of early Greek rhetoric. Likewise, Schiappa makes a convincing case, against Plato, that there was no core ideology that all of the so-called “Sophists” held and by which they could be identified as Sophists (Schiappa 1999, 48ff.): “in short, even if we stipulate the traditional list of Sophists as definitive, there is no consistent ideology that could be called a Sophistic rhetoric” (Schiappa 1999, 56); “The attributes one finds on all or most of the standard lists of Sophists are also common to many other thinkers in the fifth century; such as their questioning of the dominant religious dogmas, their innovation in compositional style, and their role as teachers” (ibid.).<sup>6</sup>

Schiappa's attempt to escape the influence of Plato and Aristotle, and the results of his study of the Sophists, lead him to propose a different program for the study of the history of rhetoric:

my goal is to attempt to illustrate the utility of a different approach to the texts in question – an approach that focuses on *petits recits* rather than a grand narrative, and an approach that explores the process of theorizing and disciplining itself, rather than examining the texts of the time as end-products of a process already completed (Schiappa 1999, 82)

What Schiappa means by “explor[ing] the process of theorizing and disciplining itself,” is the close study of texts themselves:

---

<sup>6</sup> But Prince (2002) in her review of Schiappa notes that few contemporary scholars even before Schiappa would have accepted Plato's polemical characterization of the Sophists.

Prior to the formalization of rhetorical study in the fourth century BCE their compositional practices are more likely a result of imitation and evolving oral patterns of composition than an evolving “theory” at work. [...] The point is that humans can get quite good at doing various things long before developing abstract theories and specialized vocabularies about what it is that we are doing. Prior to the emergence of anything like competing “theories” of topics ranging from catharsis to physics, Greeks were practicing both quite well without a technical vocabulary to describe what they were doing. [...] Accordingly, it should not surprise us that oratory as a practice became fairly sophisticated through a process of imitation and evolution well before a technical vocabulary developed and before self-consciously held “theories” emerged. (Schiappa 1999, 108-9)

For the study of rhetoric’s development, then,

We need to identify at least three steps to the emergence of rhetorical theory of the type found full-blown in the texts of the fourth century BCE. *Nontheoretical texts* describes texts where patterns and implicit rules may be found but no evidence of discussion or reflection on such rules. [...] *Undeclared theory* may be a useful way of describing texts in which patterns emerge and there is some evidence of reflection about composition – such as the emergence of a rudimentary technical vocabulary – but insufficient evidence to attribute a distinct and self-consciously held “theory” to the author. It is possible to cull an “inferred” or “implied” theory or set of rules out of such texts, but without adequate evidence it is potentially anachronistic and misleading to call it a theory of rhetoric (or in this case, a theory of arrangement). The phrase *rhetorical theory* can be limited to texts containing explicit discussion of rules and principles of rhetoric which may or may not influence the compositional practices of others. Clear examples of each would include Homer’s epics as nontheoretical; Gorgias’ texts for an undeclared theory of arrangement (though Gorgias articulates an *explicit* account of *logos*); and Aristotle’s *Rhetoric* for rhetorical theory. (Schiappa 1999, 109)

In effect, Schiappa redeems the literary element of Kennedy’s approach, the idea that the surviving literature before Plato and Aristotle can provide insight into rhetoric’s development, not merely show its absence. The problem with Kennedy’s approach is that, with rhetoric an inherent element of Greek thought, all Greek literature is found, dubiously, to hold some lesson or another on its development. Cole rightly rejects this approach, but in dismissing the literature as well, he goes too far. Schiappa, serving as a corrective, makes a strong case more measured approach, in which the study of the surviving “pre-rhetorical” literature can offer insight into the development of rhetoric, so long as measures are taken to avoid the anachronistic readings that can result from the contaminating influence of later theorists like Plato and Aristotle.

Of the Ten Attic orators, Lysias is the one whose study is most altered by Schiappa’s text-based program. Although later than Gorgias and Antiphon, Lysias’ floruit was early enough that he was writing and working prior to the emergence of systematic, theoretical rhetoric. The speeches attributed to him therefore stand as an invaluable source for the study of rhetorical practices just prior to the appearance of

a more rigorously systematized, theoretical rhetoric. If practices themselves are to be included in histories of rhetoric – and if we are to include in rhetoric not only theorists but practitioners – Lysias’ speeches must be taken more seriously than they are in Cole and read more closely than they are in Kennedy: the corpus of complete speeches must be given greater pride of place in our thinking on Attic prose and its connection to “undeclared theories;” and Dionysius should serve as a support not a substitute for readings of speeches.<sup>7</sup> Moreover, freed from grand historical narratives of rhetoric’s evolution, and from anachronistic disciplinary constraints like “rhetoric” and “philosophy,” we may ask of Lysias’ work better questions than “how many steps behind Plato and Aristotle was he?” We may ask, rather, what is interesting in Lysias’ practice and what is distinctive about his speeches, regardless of whether his techniques generated offspring in later theory or practice.

#### **Bateman (1958 & 1962), Wohl (2010), the literary approach, and close readings of speeches**

Dionysius’ views on Lysias have gone unchallenged not just because of scholarly tradition. They have stood also because most of us agree with him: the Lysianic speeches do have a distinct vividness, persuasiveness and charm; his speakers are compelling, lively creations; his introductions are superb and seem well fitted to the specifics of the suit for which they are written; and his prose is exceptionally pure and lucid. But Dionysius’ appraisals of Lysias’ virtues provides no guidance for the interpretation of his speeches. In Kennedy’s case, Dionysius’ influence is actually seen to obstruct it. Closer attention to the speeches themselves is needed.

Bateman (1958 & 1962) provides among the most extreme examples of a close, textual approach to the study of rhetoric. His work shows the flexibility and subtlety of Lysias’ techniques of reasoning, his skill in bending reasoning, making his arguments and antitheses less sound but perhaps more convincing. This adds to our understanding of reasoning in Lysias, and like Usher’s classic study of

---

<sup>7</sup> Our doubts about their authorship should give the Lysianic speeches even greater pride of place: if they are the work of multiple authors, then, as noted above, they are likelier than Thucydides or Antiphon to be representative of standard Attic prose in the late-fifth and early-fourth centuries.

Lysianic characterization (Usher 1965), it distinguishes itself from the vast major of previous and subsequent work partly by treating Lysias as a writer worthy of study on his own merits. But Bateman's studies, although they have the great virtue of attending to minutest details at the level of word and logic, suffer from some of the same weaknesses that Wohl observes in historical work on Attic oratory. First, Bateman treats speeches as data: in his taxonomy of arguments, the fact that a particular example appears in one speech or another is irrelevant, because the flow of arguments and even the boundaries between speeches have no bearing on the categorization of the self-contained arguments that are Bateman's object of study; his work cannot tell us how the example fits into its immediate context or the speech as a whole. The second weakness of Bateman's work is its reliance on repetition in the corpus, its focus on the species at the expense of the specimen; the example is always subordinate to the category, and this further limits appreciation for the individual example or speech itself. Lastly, Bateman's work is undermined by its exceedingly narrow understanding of rhetoric: the rhetoric that Bateman examines is one strictly defined as the study of arguments; this excludes many other aspects of argument and persuasion, like narrative technique.

Individualized treatments of whole speeches do exist but are found almost exclusively in the introductory remarks of commentaries and in some more specialized work (e.g., Weissenberger 1987 & Grau 1971). On literary issues these helpfully familiarize the reader with the text and explain its background issues, but, when they rise above the level of summary, their handling of literary issues is often superficial. Rather than provide interpretative guidance based on close reading, commentators tend to abstract and re-shuffle surface elements so as to clarify, e.g., a complicated narrative that might confuse the first-time reader. Nor, in the cases of the most discussed speeches, has the content of these literary introductions changed much with the passing of time. In any discussion Lysias 1, for instance, it remains customary to draw the comparison to Boccaccio first drawn by Blass. Continuity in the secondary literature is hardly a vice, but the lack of innovation in how we study and write about Lysias is striking, lamentable, and easily explained: the rhetorical strategies of the speeches are thought to be well, or well enough, understood already. Commentators fall short not so much by making incorrect claims about the

speeches as by failing to ask whether there might be more to say about them vis-à-vis their persuasive techniques or art.

The longstanding consensus on Lysias, as the most skillful literary craftsman of the Ten orators, makes him well suited for a more ambitious interpretative treatment; it is widely agreed that his technique is subtle and that his rhetorical methods escape notice even as they create their intended effects. In this vein, there has been a small handful of recent work that expands our understanding of Lysias speeches and thus Lysias as a writer: Usher (1965) on characterization; Bolonyai (2008) on mathematical trickery; Carey on humor in Lysias 24 (1990); and Porter on comic *diēgēsis* in Lysias 1 (2007 [1997]). But Wohl's study of juridical discourse (Wohl 2010) is by far the most ambitious literary or rhetorical examination of Attic speeches, and offers the only extended theoretical discussion of what sort of literary-critical framework might enable us to engage more closely with these texts.

The object of her groundbreaking work, as she puts it, is to explore and explicate the legal "world" (*kosmos*) that each forensic speech creates (as opposed to the one it reflects, which is the usual object of interest). These being speeches written ostensibly for legal contests, Wohl is in a way merely granting them the privilege, which they were previously denied, of being interesting and worthy of study as examples of forensic rhetoric. Wohl is therefore less interested in the kinds of historical issues that have obsessed other commentators, such as reconstruction the *Rechtsfall* that, for Hillgruber, is the only goal of studying the speeches (Hillgruber 1988, 8) – i.e., to understand the suit itself, its legal and historical parameters, and whether the speaker's arguments would have or did convince the jury. What interests Wohl is the speech itself, how it frames and grapples with the issues that it raises.

Wohl has done more than any other scholar to advance, in a deliberate, self-conscious way, the literary and rhetorical study of Attic oratory, and my own approach is in great sympathy with hers. I take issue, however, with some elements of her theoretical framework and its application. To take a simple example:

In Lysias 16, for instance, a speaker who is being barred from appointment to the Council on the grounds that he served in the cavalry under the oligarchic regime of the Thirty argues, virtually in a single breath, that he was not in the cavalry nor was his name on the registry, but even if he was on the registry, you can't

trust that because the lists can be forged; if he had been in the cavalry he would admit it and be proud of his service (which he would prove was spotless); anyway, many other people who were in the cavalry now serve on the Council, and he wouldn't even bother to defend himself on this score if his opponents weren't telling barefaced lies about him (16.6–8). Moreover, he continues, even if they aren't lying about this they are lying about everything else, and he should be exonerated for his blameless life and patriotic bravery. In his eagerness to produce every possible argument for his case, this speaker even produces conflicting arguments. Hypothetical statements (“even if I were in the cavalry . . .”) compete with declaratives (“I wasn't in the cavalry . . .”). Evidence is simultaneously presented (“I'm not on the registry”) and withdrawn (“the registry isn't reliable”). His speech does not proceed in the straight path of persuasiveness but instead zig-zags and doubles back, cedes ground and stumbles over itself. (9)

Certainly Mantitheus either was in the registry or was not. Both cannot be true. But Mantitheus nowhere presents both claims as fact: one he asserts as factual; the other is contrafactually premised for the derivation of additional arguments. Logic permits him to grant such premises *ad infinitum*. So long as they are stated conditionally, they do not conflict with the speaker's original, factual assertion that he was not in the registry. The lines of argument that Wohl compares therefore are not “conflicting,” nor is there any “stumbling” of the sort that Wohl describes. Wohl sees a similar rhetorical slippage, and I again take issue with her interpretation, in Euphiletus' use of *enedreuesthai* at the end of Lysias 1:

If you are not going to acquit me, he tells the jurors, then you should erase the laws and write new ones protecting adulterers, “for that would be far more just than allowing citizens to be ambushed (*enedreuesthai*) by the laws that bid a man to act as he wishes if he catches an adulterer” (49).

His point in this closing section is clear, but the expression is striking. In a genre not much given to metaphor, the verb *enedreuesthai* stands out: it is, as a commentator says, “a powerful image, the more so for its use in relation to νόμοι [*nomoi*].” But it is more startling still in relation to the argumentative structure of the case, for it evokes precisely what Euphiletus hopes to deny, the prosecution's claim that he had lured Eratosthenes into his house to ambush him there. It is hard to see why Eratosthenes would have wished to remind a jury in his closing statement of a counter-narrative he has worked so hard to refute or why he would attribute to the laws, whose humble agent he claims to be, the precise act of which he himself stands accused. The metaphor resists explanation within a functionalist hermeneutic of persuasion. (Wohl 2010, 11)

With all due respect to Wohl, the metaphor is easily, and best, explained within a functionalist hermeneutic of persuasion: for the entirety of his speech, Euphiletus has been attempting to persuade the jury to accept an inverted characterization of the legal situation, where the trial is treated less as a murder trial in which he is defendant than as an adultery trial in which he is prosecuting an adulterer who died a just and legal death as a result of his crime. This formulation of the suit requires Euphiletus to convince the jury that he, not Eratosthenes, is the victimized party. The use of *enedreuesthai* reinforces that element of the inversion: it drives home the point that, far from having laid an ambush for an innocent victim,

Euphiletus is himself in danger of becoming the victim of a kind of legal ambush, if the jury rules against him.

My disagreements with Wohl notwithstanding, her readings of the speeches are on the whole enlightening. Even where I disagree with her, I do so in a spirit of appreciation and admiration. I am less enthusiastic about her critical framework:

This book reads juridical discourse in and as the rhetoric of forensic oratory: the substance of the speeches' jurisprudential thought is contained in and constituted by the complex dynamics of its linguistic form. I read the texts not only for the persuasive strategies of the individual speakers, but also for what in the text entraps or ambushes those strategies. Methodologically, these readings are thus literary, even deconstructive. My focus is on those moments when forensic language turns against itself and bespeaks something more than just the manifest talking points of the litigant. Those moments, I suggest, expose the jurisprudential engine of the rhetorical machine. For this reason, it is obviously dangerous to extract and collate statements from across various texts: statements, ideas, images take on full meaning only within the context of the specific forensic argument, against the backdrop of everything a speech is trying to say and not to say. When I do survey scattered passages (as I unavoidably will in places to provide context), it will be with a certain suspension of belief in the conclusions, which will stand or fall with the full readings of individual orations. (Wohl 2010, 12)

Wohl thus takes upon herself a number of difficult, competing tasks: (1) define the rhetorical strategy of each speech; (2) explain the underlying juridical thought; (3) point out how juridical thought and rhetoric (3a) are in tension, (3b) break free of the speaker's attempts to control them, and (3c) produce unintended meanings that undermine the speaker's central message. Wohl clearly states that the juridical thought that she describes is not systematic, not philosophical; she speaks of it as "indigenous theorizing" (xi-xii). It is to Wohl's great credit that she recognizes this non-systematic quality of the speeches as systems of thought and embraces it, investigating how the system breaks down and how its fractures ripple through the meaning of the speech. And yet her deconstructive frame, in which the attempt to define and contain meaning simultaneously creates instabilities and uncertainties that escape the speaker's grasp, nevertheless holds the orators to the systematic, philosophical standards that one would find in systematic or philosophical thought:<sup>8</sup> her approach assumes that the orators aim at consistency and sound argument

---

<sup>8</sup> "The tropes and images in which he expresses his intent work against it, leaving it unreadable within a hermeneutics of truth (and its distortion) or persuasion (and its failure). Rhetorical ordering skews legal ordering: one *kosmos* destabilizes the other. Athenian law is rhetorical, then, not in Aristotle's sense but in Paul de Man's: it operates within the figural dimension of language that makes a text's meaning undecidable in the terms of its own



but inevitably fall short – and the drawbacks of this style of reading the speeches are evident above: in the case of Lysias 16, the speaker’s logic is, with all due respect to Wohl, better than his interpreter’s, because the interpreter strives too hard to find logical weakness; in Lysias 1, the speaker’s lexical choices are better explained by persuasion-oriented rhetorical analysis, despite what one might call its epistemological or philosophical naïveté, than by a more philosophically circumspect deconstructive model.<sup>9</sup>

Wohl’s deconstructive approach yields unsatisfying results in part, I suspect, because it is based on a strangely self-defeating model of rhetoric:

[The forensic speeches] are designed to be understood on the surface and they present as smooth and lucid a surface as they can. In this sense, they ask to be read as they usually are read, as straightforward, unambiguous, transparent. But that smooth surface is illusory and on closer reading cracks appear. Points are raised and not developed. Arguments are made that contradict other arguments. Details intended to prove a case sometimes subtly undermine it, while suppressed details insinuate themselves within a speaker’s language and quietly disrupt a case that requires their exclusion. The rhetorical strategies by which speakers attempt to efface their rhetoric instead often cast it in relief. On this rough surface of the forensic speech lies a depth of jurisprudential meaning and it is here, in the form of the speeches, that I seek the content of their juridical thought.

While I take it for granted that the speeches were designed to persuade, my interest is in the rhetorical features of the speech that fall outside this interpretive framework, elements that do not fail to persuade so much as they fail to be fully explained by the sole criterion of persuasion. Even if we accept the cognitive and discursive assumptions behind the notion of speakers who hone or manipulate their rhetoric to convince a large democratic jury (assumptions that include an intentional and masterful subject of language and the felicitous efficacy of speech acts), and even if we were able to overcome the epistemological limitation of not knowing whether a given speech was in fact persuasive or why, this functionalist model seems to me to provide an inaccurate description of the rhetorical texture of forensic discourse. (Wohl 2010, 7)

Wohl, if I understand her correctly, believes that flaws in a speaker’s reasoning and weaknesses in his arguments are evidence that something has escaped his grasp, defying his attempts to control it; the speaker’s intentional control of rhetoric ends wherever we, the observers, cease to be persuaded by it or find faults (“cracks”) in it. And yet Wohl simultaneously warns against rhetorical analysis based on the

---

grammar, logic, or putative intent. If we wish to call this dimension of language “literary,” then in Athenian forensic oratory law is literature” (Wohl 2010, 4).

<sup>9</sup> The deconstructive model is unnecessary for Wohl’s project to be successful and valuable to future readers of Attic oratory: her readings of the speeches are structured in such a way that tasks (1), (2) and (3) – described above – always unfold in sequential order. Her account of juridical thought in the speaker’s rhetoric – tasks (1) and (2) – is unfailingly compelling, and sufficient in itself as an account of both the rhetorical strategy and the underlying juridical thought. Her accounts of how the strategy breaks down – (3) – often seem forced.

speaker's intention to persuade. Wohl's framework sidesteps the epistemological problems of interpretations that deal with the subjective and unknowable (i.e., the speechwriter's intentions and the effectiveness of his arguments), and evaluate rhetoric instead on the basis of the knowable, absolute standard of logical consistency – or something like it. But as her readings of Lysias 16 and 1 show, her judgments about argument and logic *are* judgments about the speechwriter's ability to persuade and intentionally control his language. It is not clear to me that her rhetorical framework is fundamentally different from the "functionalist hermeneutic of persuasion" that she rejects as "inaccurate;" as far as I can tell, her deconstructive framework is essentially a repackaging of the hermeneutic she rejects.

The speeches are indeed designed to be understood on the surface, and cracks do appear on closer inspection. But I do not accept that there is any "discursive hyper-productivity that is always generating more narratives and more meanings than can readily be accommodated by a model of rhetoric premised on the intending subject and his persuasive ends" (Wohl 2010, 9n.). If "cracks" in the surface do sometimes show rhetoric escaping the grasp of the speaker, they can also show the opposite, revealing the rhetorical mechanics that lie beneath the speech's surface – the subtle art that produces the surface's artificial smoothness and conceals its artificiality. My disagreement with Wohl distills to this one issue: Wohl seems to think that a speaker's intentional use of rhetoric cannot accommodate inconsistency and internal contradiction; I insist that it can.

### **Usher (1965 & 2004)**

The community of scholars who have devoted themselves to the interpretation of oratory qua oratory is tiny. The community that has done this for Lysias per se, vanishingly so. Out of that small group, Usher is the one whose work mine most resembles, as represented by two articles (1965 & 2004). The first proposes that Lysias deliberately invests his speaker with "venial blemishes" (Usher 1965, 103), and that these serve discernible rhetorical functions. I disagree with some of Usher's interpretations,<sup>10</sup> but

---

<sup>10</sup> For instance, I see none of the anger or gaucheness that Usher sees in Euphiletus (1965, 102ff), on which see page 59.

nevertheless regard his piece as the finest interpretative treatment that Lysias has ever received: Usher calls attention to a peculiar, distinctively Lysianic feature of some of the speeches that survive under Lysias' name; he convincingly argues that this feature is deliberate and calculated; and his piece thereby offers an interpretative model for the other Lysianic speeches as well. Usher has made us more apt to notice flaws in Lysianic speakers and thus more attuned to the rhetorical strategies that those flaws support.

My dissertation is in a way an extension of Usher's work on characterization. In arguing that Lysias' rhetorical strategies accommodate inconsistency and contradiction, I am arguing that the "cracks" that Wohl takes to be unintentional are in some cases deliberate. In the case of Usher's venial flaws, the deliberately placed "crack" is meant to be visible. The rhetorical effectiveness of the venial flaw in fact depends on its being glaringly, engrossingly obvious: Lysias' speakers cultivate harmless flaws or endearing weaknesses in one area of themselves in order to draw the listener's attention away from potentially more damaging ones in other areas; in order for the one to conceal the other, it must capture and hold the listener's attention. In the case of the inconsistencies and discrepancies that form the basis of my close readings, however, visibility would be potentially catastrophic. Even where discrepancies do not take the form of outright self-contradiction, they often call the honesty and trustworthiness of the speaker seriously into question: at the conclusion of Lysias 7, for instance, the speaker is, in a sarcastic, belittling tone, rounding off an aggressive series of proofs and disproofs intended to demonstrate his opponent's incompetence; the speaker has by this point in the speech openly claimed to be among the city's most enthusiastic and generous liturgists. The juror could be forgiven for wondering how the cocksure figure lashing his opponent at the speech's close could possibly be the same person as meekly stood before the jury, in a posture of fear, helplessness and reluctance to be caught in the public eye, at its opening.

Usher obviously savors the fineness of Lysias' technique, and it is likely this appreciation that enabled him to make so valuable a contribution to its study: faith in the persuasive model of rhetoric that Wohl rejects, and trust in the literary and rhetorical adroitness of the speechwriter, enabled Usher to

recognize that the flaws of Lysias speakers are not the flaws of the speech, and that those flaws may in fact account for some of the speech's effectiveness. Fittingly, it was Usher, in a later piece (2004), who admonished the current generation of classicists for forgetting that speeches were written and consumed not just for demonstration and instruction but for enjoyment. In arguing that the speeches were read this way by ancient audiences, Usher indirectly counsels us to read them similarly, to savor their art. This is in a way what I have tried to do. The purpose of the dissertation is not to rehabilitate Lysias; he needs no rehabilitation. But I hope to show that the speeches are subtler than we thought and thus merit closer reading.

### **The dissertation**

The dissertation is not a rhetorical study in Kennedy's sense: I do not believe that I am ferreting out the thought structures essential of the Archaic and Classical Greek mind, inherent in its literature and later systematized by the Sophists, Plato and Aristotle; nor am I content to allow discussion of Lysias' speeches to begin and end with Dionysius of Halicarnassus. Nor is the dissertation a rhetorical study in Cole's sense: there are no self-conscious theories of the available means of persuasion in Lysias, let alone ones that suggest any notion of the separability of message and medium. Theoretically, the dissertation is in greatest sympathy with Schiappa's approach to theoretical rhetoric, Wohl's approach to the literary study of forensic speeches, and Bateman's fine-grained approach to the analysis of individual arguments: in studying Lysias' speeches, I have found characteristic patterns of arrangement that have yet to be described by commentators and that do not, to my knowledge, appear either implicitly in the works of other Attic orators or explicitly in Classical Greek rhetorical theory. My goal here has been to produce close readings of speeches, less as Schiappa reads Gorgias than as Wohl reads Lysias and the other orators. In doing so – in particular, in attempting to apply to each speech as a whole the sort of minute scrutiny that Bateman applied to single arguments – I have found “that persuasion may not be as straightforward as it appears and that the persuasive purpose of the speech may itself be a complex rhetorical strategy instead of a simple organizing telos for all rhetorical strategies” (Wohl 2010, 8). At

root, however, my work most takes after that of Usher, the sole commentator, out of those discussed above, who never seems troubled by theoretical questions as to whether his work should be counted as literary interpretation, rhetorical analysis or both, or whether it fits into any particular historical narrative of Classical Greek rhetoric or prose.

The results of my literary-rhetorical study are seen partly in the common structure of the four core chapters. Each treats one speech, starting with discussion of basic and background issues. Eventually that discussion reaches an impasse, where some part of the speech is found to be in conflict with some other part: when the early portions of a speech and its later portions are compared, it becomes evident that the speaker has changed his mind about something. Sometimes the change is minor and easily excused, such as in the case of a mere shift of emphasis. At other times it amounts to gross self-contradiction. After explaining the nature of the discrepancy and the problem that it creates for the speech's interpreter, I then show how it emerges over the course of the speech. In doing so, I find the discrepancy to be a reflection of the unfolding process of persuasion, i.e. the rhetorical strategy. That strategy itself I take to be essentially mimetic and psychological: as the speech unfolds, and the speaker's words have their effect, the juror's mind changes; it becomes receptive to different arguments, tactics and modes of self-presentation on the part of the speaker; the speechwriter thus adjusts these elements, balancing the work of accommodating the juror against the work of bending his changing disposition toward an eventual goal. The rhetorical effects of the speaker's words, that is, are fed back into the speech as it unfolds. The changes that the speaker himself and his arguments undergo, and the contradictions that result, reflect the speechwriter's continuing attempts to fit his speech to the evolving mental state of the listener. The goal, it seems to me, is to disarm the listener by seeming to validate his beliefs and prejudices; but even as he accommodates the listener's views, the speaker simultaneously tries to create the conditions that allow him to change them. Viewed in this light, logical consistency and sound argumentation are not just beside the point. They are potentially antithetical to it. If the speaker's strategy is successful, the listener's beliefs at the end of the speech will be changed from what they were at the opening. He may no longer accept what he earlier took for granted. In short, the arguments and claims that Lysias' speakers

make function as temporary measures, instrumental and tuned to the needs of a specific moment. Once that moment passes, the argument or claim may be cast aside and contradicted as needed.

The standard view of Lysias as the master of *ēthopoia* therefore captures only a fraction of the psychological and characterological work that he carries out in some of his speeches. In particular, the psychology of the speaker cannot be understood in isolation from that of the juror; the speaker takes on some of the beliefs and feelings that he expects to find in his audience in his attempt to induce the unconvinced juror to support him. This targeting of the juror who is unconvinced but willing or able to be persuaded explains why Lysias' speakers are so often invested with venial flaws: jurors who already support the speaker need not be catered to beyond the obvious need not to alienate them, and the speaker's energy would be wasted on the intransigently hostile juror. The speechwriter therefore directs his effort toward gaining control over the juror who might be suspicious of the speaker but has yet to decide how he will cast his vote, or whose decision can be changed by an effective speech. The speechwriter does this by creating a flawed character for the speaker, one that grants the validity of the unconvinced juror's suspicions, while at the same time redirecting and weakening those suspicions. By doing so, the speaker aims to win the listener's trust, and it is within that frame of trust that the speaker then makes his case, whatever it may be. The psychologies of speaker and opponent are no less interconnected. At times the speaker disavows the weaknesses or defects that the unconvinced juror is likely to see in him – only to attribute those same qualities to his opponent. Here, again, the speaker is seen attempting to gain control over the beliefs and attitudes that he expects to find in his listeners: in order to bolster his attack on his opponent, the speaker does not merely invent attacks; he redirects the attacks and prejudices that he himself expects to face in the course of the trial. “All those terrible things you believe about me are true,” he seems to say, “but not of me; they are true of my adversary.”

This approach to persuasion, which relies more on a kind of psychological or emotional progression than on the focused development of converging, complementary, consistent lines of argument, leads the rhetorical strategies of all four speeches to unfold in the same essential way. The farther the speaker advances in the speech, the more, presumably, he can presume on the trust of the

jurors whose loyalties he seeks; and as the speaker finds more trust and support in his audience, he can afford to take greater rhetorical risks. Because of this, the speeches progress from matters that are less controversial or tendentious to matters that are more. Indeed, the arguments that best represent the speaker's forensic strategy – that is, the argument(s) on which he wishes, ultimately, to base his case – are the ones that appear in the speech's later chapters. These arguments also tend to be the most dubious or rhetorically challenging arguments that the speaker makes. The unfolding of a speech can be summarized, therefore, as the process of clearing from the mind of the juror the obstacles that prevent the speaker from making the case he wishes to make; the goal is to create the mental conditions in the listener that will induce him to accept what the speaker intends, at the end of his speech, to argue. The more difficult or tendentious arguments, which the speaker holds in reserve until the later portions of his speech, are precisely the ones in discrepancies become apparent, showing the speaker's stance to have changed from what it was at the opening of the speech. These changes and discrepancies, then, provide a window into the speechwriter's overall rhetorical goals: the claims and assumptions that we find at the opening of a speech cater to one mindset; later claims and assumptions cater to quite another; and the difference between them shows us what changes the speechwriter has attempted to make in the juror's thinking.

In a way, the dissertation calls into question the longstanding view that Lysias' introductions are well tailored to the specifics of his speeches. I have shown that his introductions distract and misdirect, and that they often represent the very positions, attitudes and claims from which the speaker will later distance himself. The impressions the *prooimia* make and the expectations they create are to some extent false. This is not to say that the opening of the oration is not key to understanding it: the opening sentences – often the opening sentence by itself – of each speech tends to set out the speech's central themes and issues, but the stance that the speaker adopts and the manner in which he presents those themes and issues are temporary.

Many who have written on Lysias note the deceptive clarity and simplicity of his prose; I have searched the secondary literary in vain for any explanation of what is meant by this or how it works in

practice. The art of Lysias conceals itself; this is widely agreed. I have made it my task, in part, to identify what that art does and what it conceals. What I have found is that the ideas that structure a passage and make it persuasive are usually latent, not stated outright. Close reading for themes and concepts that the speaker does not directly name sheds light on the reasons why the speech unfolds as it does. This means that there is greater continuity than has been thought between the four parts of the speech (*prooimion*, *diēgēsis*, *pisteis*, *epilogos*). The divisions between sections (between *diēgēsis* and *pisteis*, for instance) do not disrupt the processes of development that I have described. They are integral to it. Ordinarily a speech's proofs are thought simply to pick elements from the narrative and supply arguments based on them. I argue for a more nuanced relationship: rather than merely "use" for particular arguments the material supplied in the narrative, the *pisteis* actually grow out of that material and continue to develop the same themes and motifs as develop in the narrative.

I should stress that I do not intend to make claims about what, specifically, the author of these speeches was thinking when he wrote them; and I am not claiming that Lysias' working, mental model of persuasion is the one that I present. Rather, I have tried to identify how the speeches themselves construct the process of persuasion, what assumptions they make about their audiences, and how, on their own terms, the speeches seem to expect either to convince or to fail to convince their audience. I find it impossible to imagine, if I have accurately described the workings of the speeches, that the author was unaware of the techniques I identify, but I present this as merely a belief, not as a provable assertion, let alone a conclusion that may be drawn from my arguments below.

### **Distilling the dissertation: hallmarks**

The dissertation may be distilled to what I have called 'Lysianic hallmarks,' namely the features that the four speeches share with one another and in which they seem to exemplify Lysianic rhetoric at its most persuasive and sophisticated:

- 1) *Discrepancy*: when the early chapters of a speech are compared to its later chapters, discrepancies become apparent:



- a. Lysias 1: the speaker at first takes a posture of shame and cowed subservience to the jury. Late in the speech he assumes an imperious posture towards them; he demands their support, claims to be owed civic pride, and declares that his actions had an unquestionable legal justification.
  - b. Lysias 3: the speaker at first assumes a posture of shamed embarrassment about his conduct towards the male prostitute Theodotus and his dispute with Simon. Late in the speech the male prostitute is no longer a concern and the speaker shows no hint of shame or embarrassment. Moreover, the speaker at the opening of the speech takes for granted that Simon felt desire for Theodotus. Towards its close, he questions whether this was ever so.
  - c. Lysias 7: the speaker at first formulates the crime of *sēkos* removal in such a way that it can have taken place only due to the actions of the Spartans and their friends during the Decelean War. Later it is a crime that an Athenian could easily have committed during the time of the Thirty. Initially the speaker takes a posture of meekness, fear, helplessness and wariness of being caught in the public eye. Later in the speech he takes a sarcastic, almost playful tone in attacking his opponent, while grandly pronouncing himself among the city's most generous benefactors.
  - d. Lysias 10: at first the legal background of the suit is defined in narrow terms, underscoring the elements of it that might reflect poorly on Theomnestus and concealing the elements that might reflect well on him. Later in the speech the speaker presents that background much more fully. In the process of doing so, he redefines the suit: the issue of slander at the end of the speech becomes subordinate to the other injustices of Theomnestus that a conviction would correct.
- 2) *Strategic positioning*: the speechwriter arranges the elements of the oration in ascending order of rhetorical difficulty; the early chapters of an oration tend to make claims and take

- positions that listeners are unlikely to challenge, whereas later chapters tend to be more tendentious.
- 3) *Delaying tactics*: the claims that the speaker makes late in the speech are carefully prepared for. If stated outright at the opening of the speech, they would likely be rejected out of hand and so damage the credibility of the speaker and the success of his suit. The speechwriter avoids acknowledging these issues or allowing them to enter the thinking of the jury, yet by the end of the speech they are often the focus of his client's case.
  - 4) *The first sentence as summary*: the speaker's opening words set out the central themes and issues of the speech, but his handling of those themes and issues change as the speech progresses.
  - 5) *The speaker changes*: Lysianic *ēthos* is not static. The speaker's psychology evolves over the course of an oration and his emotional state changes. The speechwriter, early in the speech, often calls the listener's attention to some flaw or weakness in the character of the speaker or some misstep. By the later chapters of the speech, where the speechwriter can be more confident of the juror's support, that flaw is no longer present in the speaker.
  - 6) *The rhetorical strategy is not stated outright*: the rhetorical strategy is discernible through close reading that attends to themes, motifs and lines of thought that the speaker does not acknowledge. The rhetorical strategies that I describe are never openly acknowledged.

When I use the term, as I often do, "Lysianic," I use it to mark the techniques shared among the four speeches, not to make any claims about authorship. My claim is simply that these speeches share certain elements that I have not detected in the other orators and that do not appear to be at work in all of the speeches that have come down to us under Lysias' name. As for the question of how these speeches are distinct from others in the Lysianic corpus, and from those of the other orators, I offer that the dissertation represents an initial effort. A more ambitious treatment of the surviving Attic speeches, one that incorporates the rest of the forensic speeches, will have to wait until the dissertation becomes a book.

## Plato and Pseudo-Plutarch

My readings of Lysias 1, 3, 7 and 10 bear a striking resemblance to some elements of the *Erotikos Logos* and Socrates' criticism of it: the openings of all four speeches that I have studied take for granted certain things that the audience are expected to know, making assumptions that are hidden but could easily be challenged; and the speeches are, in a way, out of order, as the speaker strategically ticks off arguments not in the order that will most clarify the truth but in the order most likely to string the listener along. Like the speaker of the *Erotikos Logos*, moreover, Lysias' speakers are arguably seducers: the goal of their rhetorical strategies is the creation of an emotional state and a relationship; they intend to worm their way into the loyalties of the listener, and, like the speaker of the *Erotikos Logos*, do so by simulating a false mental state in order to induce a true one in the listener.

My sense that Lysias' speeches target the first-time listener, moreover, is in keeping with Pseudo-Plutarch's anecdote:

Λυσίας τινὶ δίκην ἔχοντι λόγον συγγράψας ἔδωκεν· ὁ δὲ πολλάκις ἀναγνοὺς ἦκε πρὸς τὸν Λυσίαν ἀθυμῶν καὶ λέγων τὸ μὲν πρῶτον αὐτῷ διεξιόντι θαυμαστὸν φανῆναι τὸν λόγον, αὐθις δὲ καὶ τρίτον ἀναλαμβάνοντι παντελῶς ἀμβλὺν καὶ ἄπρακτον· ὁ δὲ Λυσίας γελάσας 'τί οὖν;' εἶπεν 'οὐχ ἅπαξ μέλλεις λέγειν αὐτὸν ἐπὶ τῶν δικαστῶν;' (Plut., *de Garr.*, 504C)

Lysias once composed a speech for a man engaged in a suit and gave it to him. The man read through it a number of times and then went back to Lysias, dispirited, saying that on a first reading the speech seemed marvelous, but that when he took it up a second and third time it seemed dull and ineffectual. Lysias laughed and said, "What, then you're planning to recite it for the jury more than once?"

As happens in the *Phaedrus*, the listener's initially glowing assessment grows dimmer when Lysias' text and techniques are revisited and more closely examined. The anecdote nicely captures the psychology of the persuasive process as I have outlined it: if Lysias' rhetorical strategies are not meant to stand up to close scrutiny, and if they are for listeners who have neither the luxury of a written text nor unlimited time for study, then the speech should indeed be most persuasive to the first-time listener or reader. Moreover, if the speech has the intended persuasive effect, then the listener will not, at the end of the speech, hold the same beliefs and attitudes as he held at its opening. When he returns to the opening, he may very well find himself suspicious of what, as a first-time listener, he willingly or unthinkingly accepted as true.

## Choice of Speeches

It remains to be explained why I chose to write on Lysias 1, 3, 7 and 10. The answer, albeit somewhat circular, is that on reading after re-reading of the Lysianic corpus, these are the four that intuitively leapt out at me. My reaction to the speeches, happily, fell in line with scholarly consensus: these four are regarded as among the very best in the corpus. Not coincidentally, they are among the speeches whose authenticity and authorship have least been doubted; Lysias' towering reputation has encouraged his interpreters to be least suspicious of the most impressive works passed down to us under his name. Of course, there is no reason why Lysias 6 should necessarily be any less representative of Lysias' style than Lysias 1 – it is mostly our preference for Lysias 1 that makes it so – but even if our aesthetic judgments are unhelpful for ascribing authorship, they have proven useful in the selection of interesting, complex speeches. I do not claim that the ones I have written about below are better than any others in the corpus, although my close study of them has indeed found them to be quite rich. That finding, in the end, is probably the most important one that I present in the following pages: as Wohl puts it, “there are more forensic speeches than you realized, and more to say about them than you thought” (Wohl 2010, xiii).

## **Chapter 2: Lysias 1, “On the Murder of Eratosthenes”**

*Private Vengeance on behalf of the City: the Individual, the Jury and the Authority of Law in Lysias 1*

## Introduction

Long neglected by commentators, Lysias 1 is today the most widely read and highly regarded speech in the Lysianic corpus. The speaker, a certain Euphiletus who is otherwise unknown, is on trial for the murder of a certain Eratosthenes – also unknown – who was the paramour of Euphiletus' wife. The defendant has pleaded justifiable homicide, and so his trial takes place in the Delphinion, the court that handled such suits.<sup>1</sup> The speech's authorship is today unquestioned, but it has been argued that it was written as a literary or rhetorical exercise, not for an actual suit. The speech does have certain literary-seeming features and elements that raise questions about its fictitiousness; in particular, numerous commentators have pointed out the suspiciously appropriateness of the names of the defendant and his victim – Euphiletus the “good lover” and Eratosthenes the “strong lover.”

Porter (2007 [1997]) has argued most extensively and forcefully for the view that speech is a fictive rhetorical exercise. Porter sees the speech as influenced by comic conventions, and the *diēgēsis* and the characters who populate it indeed fit tropes and archetypes found elsewhere in the adultery narratives of Greek literature (the unexpected return from the field, the bumbling husband, the elderly go-between, trickery in the course of the evening meal, etc.). But Porter's argument on comic influence is weakened by a failure to consider the relationship between the speech's literary background and cultural background; Porter treats literary convention in total isolation from the cultural realities that it reflects, glossing over the possibility that the putatively comedic tropes present in Lysias 1 merely indicate that comedy and oratory developed in the same cultural milieu and so drew on the same beliefs and stereotypes. As Porter himself points out (64), quoting Dover (1968, 186),

‘the Athenian public's long habituation to the dramatization of events which they regarded as historical contributed to their acceptance of a written speech which did not purport to be a verbatim record of what was said in court but rather represented an artistically sophisticated version of what could or should have been said in court'; perhaps more interesting is the question of the degree to which this habituation permitted or even encouraged the stylization of forensic narratives to incorporate character-types and patterns of action familiar from various literary genres. (73)

---

<sup>1</sup> Arist., *Ath. Pol.* 57.3 and Dem. 23.74; on the homicide courts see Loomis (1972) 84.

Porter and I agree that the presence of literary tropes and archetypes in no way detracts from a speech's rhetorical effectiveness or realism. But the grounds on which Porter argues for the speech's status as a fictive rhetorical exercise are dubious. He categorizes Lysias 1 together with Lysias 3, Lysias 24 and Antiphon 1 as one of a "subclass of speeches whose authenticity has been called into question" (74). All four speeches are, apparently,

brief and relatively lacking in specifics; they deal with exceptional cases whose subject matter is melodramatic or, at the very least, colorful; they emphasize narrative and/or *ēthopoia* over rhetorical argumentation and, in Lysias 1 and 24, evince a marked tendency to rely upon the performative aspects of the text as an integral part of their rhetorical strategy. (ibid.)

Setting aside the fact that the subclass of Lysianic speeches whose authenticity has been questioned includes all of the extant speeches, and that Lysias 1 is among those whose authenticity has *least* been questioned, we should note that the speeches Porter singles out are hardly brief compared to the rest of the Lysianic corpus.<sup>2</sup> Emphasis on narrative and *ēthopoia* in Lysias 1, 3 and 24, moreover, is not at the expense of argumentation; Porter himself notes that "The speech as a whole observes the forms and conventions of the Athenian courtroom, while the lengthy series of *pisteis* that comprise §§ 29-46 scarcely seem the stuff of fiction" (73). Porter cites, as other peculiarities that raises questions about the speech's purpose and fictiveness, the fact that it tell us so little about Eratosthenes and makes no attempt to tarnish him. It is true that "litigants in a Greek courtroom regularly rely upon a good offence as the

---

<sup>2</sup> Porter notes that other suits on murder are much longer than Lysias 1: "Antiphon 5 and 6 are 2.5 and 1.4 times the length of Lysias 1 respectively, while Lysias 12 and 13, where murder is again at issue, are each more than twice its length. The discussion of various time allotments at *Ath. Pol.* 67 reflects later practice, but it suggests that, as we would expect, the principal speeches in 'private' cases involving onerous penalties were lengthy: the *dikē phonou* brought against Euphiletus very likely entailed the most extreme of penalties, death plus the confiscation of property (Harrison 1971, 178), yet his defense requires only some twenty-five to thirty minutes to deliver" (74). But Porter goes on to observe that the relationship between a written speech and its delivered counterpart is always highly uncertain and concludes that "The discrepancies noted above, however, must at least cast doubt upon the notion that Euphiletus' speech, despite its impression of completeness, represents the unedited manuscript of an actual oration" (74-5). Should we therefore take the lengths of Lysias 12 and 13 and Antiphon 5 and 6 as evidence that they *do* represent unedited transcripts, or that they represent less edited manuscripts? Moreover, Lysias 12 and 13 differ from Lysias 1 in ways Porter fails to acknowledge and that vitiate the comparison. Lysias 12 gives the impression not so much of completeness but of excessiveness, due to its lengthy digression on Theramenes, which has no direct bearing on the matter of Eratosthenes' guilt. Nor can it be taken for granted that the speech was written for a murder trial: it does not define its legal setting, which may in fact have been Eratosthenes' *euthunai*. Lysias 12 and 13, moreover, are for politically charged legal actions in which the speaker must argue not just for the guilt of the accused but for the inapplicability of the general amnesty.

most effective form of defense” (76), but Euphiletus’ reluctance to attack Eratosthenes in the usual manner is not at all “remarkable” (ibid.). Such an attack would be incompatible with other elements of the rhetorical strategy. The speaker defends himself against the charge of entrapment partly on the grounds that he and Eratosthenes did not know one another. The speaker should not be expected to flesh out his portrait of a man whom he knew only long enough to capture and kill him. Additionally, Classical Attic forensic oratory uses detailed character portraits, without exception, either to tarnish or to praise. The speaker can hardly be expected to praise his opponent, but neither would it clearly be wise to attack him. (I should note that Usher and Porter see anger in Euphiletus; I do not. I argue this at length below. See page 60.) Were the speaker to show disapproval, anger or hostility towards his victim, he would give the audience cause to wonder whether he had prior familiarity with the man or did, in fact, desire to kill him; the accusation of entrapment would then seem more plausible. An attack on Eratosthenes would also weaken the speech’s impersonal portrayal of the murder: if “not I but the law of the city will kill you” (§26), if the jurors themselves established the law that ordered the killing (§29), and if the speaker was merely obeying the laws of the city (§47) – so that the penalty is not the result of any choice, desire or impulse on Euphiletus’ part – then he ought not to suggest at the same time that he had any personal motive.

Lysias 1 is, however, strikingly “literary” in ways that do distinguish it from other speeches and that raise questions about how actively the speaker selected, shaped or fabricated its elements. The names of the defendant and his victim are indeed suspiciously appropriate, and the opening sentence very peculiarly requests that the listener “become” a certain kind of juror. If the ideal reader is expected to understand the speech as a work of fiction, then the opening line may be a sly acknowledgement on the part of the author that the reader’s role as juror starts at the opening of the speech, hinting that the imaginary world of the trial begins with the speech’s first words. No other Lysianic speech opens with a similar invocation, one that performatively creates the juror’s role. Along these same lines, it is peculiar that the opening chapters of the speech should fail to acknowledge the speaker’s opponents; one gets the distinct sense that the mental space created in the *prooimion* is one that includes only a speaker and a



listener – a setting more appropriate for the private, imaginary space of fictional prose than for the courtroom, where the speaker would likely need to acknowledge his opponents more directly.<sup>3</sup> The reversals that structure the *diēgēsis*, moreover, create a much more cleanly symmetrical pattern than actual, lived events tend to produce (on the structure of the *diēgēsis*, see p. 60ff.). But I will show below that many of the speech’s seemingly fictional or literary features are best explained as components of a rhetorical strategy. The speechwriter may simply have deemed a fictional, elegantly structured *diēgēsis* to be his client’s best, most persuasive option, given that the prosecution is almost powerless to contradict any element of the narrative: most scenes are domestic and autobiographical, with none of Eratosthenes’ kin or allies present, and the only witnesses to Eratosthenes’ capture and death were apparently Euphiletus’ wife and allies. If the narrative is unusual, or unusually “literary,” the reason may be that the circumstances of the suit give the speechwriter unusual liberty to exercise his gifts as a writer.

Because the literary (or fictional) and rhetorical are so intertwined in the speech, I have avoided any discussion of literariness, fictitiousness or authenticity in setting out my reading of it: Lysias 1 asks to be read as if it were for a true suit, regardless of whether it was actually written for one, and this is how I have read it. Indeed, it has many of what I regard the essential features of written forensic oratory. Not least among these is the fact that, like Lysias 3, 7 and 10, it is intensely careful in its handling of listener psychology, as a speech written for an actual lawsuit should be; and the psychology of the listener is emphatically that of the unconvinced juror. Likewise, the speech shows many of the tropes and shifts in emotion and tone that one finds in other Lysianic speeches.

My reading of the speech argues the following: First, the role of characterization in the speech has been misunderstood and its rhetorical sophistication underestimated. Second, the *prooimion* is rhetorically stranger than has been thought: it subtly distances the speaker from his audience, preparing

---

<sup>3</sup> This is not to say that Athenian prose writers envisioned their texts, fictional or not, in a private, interior, modernly novelistic way. Readership seems to have been imagined in more communal terms (Johnson 2000), and written logographic oratory caters to precisely that notion of readership: the listener imagines him- for herself not as the individual, privately addressed audience of the author but as one of many listeners addressed collectively.

them for the first half of the *diēgēsis*, in which the speaker is to be regarded as the listener's inferior. Third, the second half of the *diēgēsis* transforms Euphiletus into the polar opposite of the naïve cuckold; he becomes more like, and as respectable as, the members of the jury. Fourth, in the chapters that follow the *diēgēsis*, the speaker goes even further: he ceases to present himself as the jury's equal and attempts to show himself to be a particularly upstanding civic authority,<sup>4</sup> whose rights in connection with the law are such that the jury has no right to judge him. By the end of the speech, then, the positions of speaker and listener have inverted: at the opening, the listener holds power over the speaker; in the closing chapters, if the rhetorical strategy has succeeded, the reverse will be true. In a way, the rhetorical arc of the speech fulfills the wish expressed in its opening sentence:

περί πολλοῦ ἂν ποιησαίμην, ὃ ἄνδρες, τὸ τοιούτους ὑμᾶς ἐμοὶ δικαστὰς περὶ τούτου τοῦ πράγματος γενέσθαι, οἷοίπερ ἂν ὑμῖν αὐτοῖς εἴητε τοιαῦτα πεπονθότες. (§1)

I would quite appreciate, gentlemen, your becoming the kinds of jurors for me in this matter that you would be for yourselves after suffering the same

This imaginary, hypothetical move – in which the listener's takes the position of defendant – becomes almost a formal, literal move at the end of the speech, where the roles of defendant and juror are indeed reversed.

## Euphiletus

The prevailing understanding of Euphiletus as a character and rhetorical instrument, little changed since De Vries (1892) categorized him as “the simple man,” is nicely summed up by Carey:

Through the medium of the narrative Lysias presents Euphiletus as a sympathetic figure, a man concerned for his wife's welfare, but also a simple man, a gullible, almost comic figure. He allows his wife to lock him in his room (§13) without registering any suspicion. The doors bang at night (§14) but he readily accepts his wife's explanation, even though he notices that she is

---

<sup>4</sup> Thus I somewhat disagree with Porter's claim that “Nothing is said [in the speech], for example, of any past services to Athens: no liturgies are mentioned, nor is any prior military service. No reference is made to his avoidance of litigation or his inexperience in legal affairs. In short, no personal details are offered that would emphasize the speaker's status as a sound citizen and firm supporter of Athens' democracy. This is striking, in and of itself, but stands out all the more when one considers the emphasis placed on Euphiletus as a man who has enforced, and thereby preserved, the laws in the face of the outrages of a wanton hooligan.” (78) The murder of Eratosthenes is Euphiletus' service to the city, and the entire latter half of the speech is dedicated to showing the speaker's “status as a sound citizen and firm supporter of the democracy.”

wearing make-up while still in mourning. The effect is to create the impression of a man so simple as to be incapable of the kind of trickery alleged by the prosecution. He falls neatly into the role of the gullible cuckold found in popular tales in many cultures, in Apuleius for the Roman period (*Met.* 9.16-25), in Boccaccio (*Decameron* Day 7, Novels 2-8), in Chaucer's *Miller's Tale*. That the stereotype was familiar in Greece is suggested by Semonides fr. 7.110-11, Aristophanes *Thesm.* 478ff., and by the frequent use of *moicheia* as a source of humor in old comedy. In a less serious context Euphiletus would be a figure of fun. The issue is too serious for fun; but the characterization still serves to induce the listener to dismiss Euphiletus as a potential plotter. But as well as the rhetorical effectiveness of the choice of character we should note Lysias' subtlety. The character presented is not complex, but the presentation is skillful. There is a danger that Euphiletus' leniency as a husband will be taken for over indulgence; so he is careful to point out (§6) that he did not give his wife too much freedom. His virtues as a husband might make him an unrealistic figure; so he tacitly admits to a peccadillo (§12) – he is not perfect. His gullibility might make him an object of derision; so the rest of his account presents him as a stern, dignified figure. Euphiletus is Lysias' most impressive creation. (Carey 1989, 61-2)

Thus Todd as well:

As far as characterisation is concerned, a major part of the defence strategy is to present Euphiletus as a naive and straightforward person, incapable of the type of plotting that would constitute entrapment. He is the sort of person who might all too easily notice but fail to see the significance of his wife's make-up, or fail to pursue his puzzlement at the fact that both doors made a noise during the night (both at §14): he is very slow on the uptake, but this is made sustainable by the way in which Euphiletus the story-teller joins us in telling the story at the expense of Euphiletus the protagonist. (Todd 2007, 51)

Both Todd and Carey see Euphiletus as an essentially naive and straightforward character, but both also see on the part of Lysias an attempt to rescue his client from the jury's potential disdain: Carey's Euphiletus becomes stern and dignified; Todd's distances himself from his prior stupidity. Neither commentator seems troubled by the juxtaposition of naïveté and sternness. Presumably this is because the two qualities easily coexist or made to do so by Lysias' rhetorical and narrative skill – making Lysias in Carey's words Lysias' "most impressive creation." But Euphiletus' two roles cannot be reconciled in this way.

Every single indication of foolishness, negligence and naïveté on the part of Euphiletus is found within (roughly) the first half of the *diēgēsis*, §§6-14. "The rest of the account," §§15-27 – which is in fact the larger share of the narrative but receives a single sentence's acknowledgement from Carey and no discussion from Todd in their discussion of the character – indeed presents Euphiletus as stern and

dignified; his earlier credulity is completely absent.<sup>5</sup> That is, the foolish Euphiletus and the dignified, serious Euphiletus occupy distinct, non-overlapping portions of the *diēgēsis*. Neither Todd nor Carey explains their decision to privilege the early chapters of the *diēgēsis* as more revealing of Euphiletus' character.

One likely reason why they privilege those chapters is that the prevailing view of Euphiletus demands it: in order to paint Euphiletus as a simple man, the commentator has no choice but to take evidence from those chapters and downplay evidence from “the rest of the account,” which paints a very different picture. Given that the prevailing understanding of Euphiletus has never been challenged, it is no surprise that commentators – with Usher the sole exception – have hardly bothered to look beyond §§6-14 for insight into characterization in the speech. Another reason why one might rely only on §§6-14 is that it is only in those chapters that the listener is guided, implicitly or explicitly, to take a particular attitude towards Euphiletus: Euphiletus specifically tells the jury that he acted foolishly and trusted his wife too much; nowhere does he claim to be a stern, dignified figure. But self-effacing asides in the recounting the affair, as Todd points out, distance Euphiletus from his past errors: Euphiletus is faulting not himself but his past self, the protagonist of his story; narrator and protagonist cannot be equated.<sup>6</sup> Euphiletus' self-critical asides show precisely that, although the protagonist is naïve, the narrator is not.

A third reason why commentators accept the standard view of Euphiletus, and thus take chapters §§6-14 as essential of his character, is that this manner of characterization seems an appropriate, highly Lysianic approach to refuting the charge of entrapment: Lysias is hailed as the master of *ēthopoia*, and his characters are often given venial flaws; Lysias thus creates for his client a simple nature that invites scorn but rules out devious trickery. Nowhere, though, does Euphiletus say or imply that he was incapable of entrapping Eratosthenes (he tells the jury, rather, that he did not lure Eratosthenes into the house by sending the slave girl but would have been within his legal rights if he had, §37ff.). In

---

<sup>5</sup> That is, neither addresses “the rest of the account” in their general discussions of the character. Their commentaries, of course, deal with the rest of the *diēgēsis*.

<sup>6</sup> Later in the chapter this will be discussed in greater detail.

explaining to the jury that he had arranged with the slave girl to be shown the affair ἐπ' αὐτοφώρῳ (§21), Euphiletus predicates his defense on the fact that he did have the capacity for such planning. To the contrary, Euphiletus defeats Eratosthenes and his wife by outwitting them: he had not arranged for Eratosthenes' arrival on a particular day, and so had not arranged for friends to be nearby or for Sostratus to remain after dinner, but to the extent that he did plan, Euphiletus was in complete control of his wife's affair and Eratosthenes' visits. Devious trickery is Euphiletus' primary tool in halting the affair: after the old woman divulges its existence, his first act is to trick the slave girl, leading her, on the pretext of a visit to the agora, to the house where her loyalty is forced; and the affair ends when Euphiletus and the slave girl trick Eratosthenes and the speaker's wife, locking them inside the bedroom. Deception and manipulation on the part of Euphiletus end the affair, just as deception and manipulation on the part of his wife, the slave girl and Eratosthenes give rise to it and prevent its detection.

The early chapters of the *diēgēsis* (§§6-14) are unpersuasive unless the jury accept that Euphiletus is, as he claims, a fool. But a simple fool is unlikely to outwit a career adulterer. Nor is it at all clear that such a person should be trusted, without the sanction of the courts, to reach legal judgments by himself and carry out summary executions. And when brought to court, the foolish, cuckolded murderer has little credibility in matters of family and law, and so he is not an ideal candidate to lecture his fellow citizens, as Euphiletus does, on the reasoning that underpins the laws on adultery – let alone claim that the murder he committed represents the jury's own will. These are the actions, arguments and assertions not of a fool but of man who wishes to be seen as something of a public official and an authority – Carey's stern, dignified figure. And yet if Euphiletus is thus respected by his audience, it begins to seem far less likely that he could have been as bumblingly negligent as he claims to be. The prosecution's charge that he entrapped his victim, likely in full knowledge that he could plead justifiable homicide, begins to seem more credible.

Both personae – fool and authority – are thus indispensable to the rhetorical strategy, but Euphiletus cannot be both simultaneously. He is one character with two personae: until §15 he is essentially the character Carey and others identify as his essence; at §15 he becomes that man's shrewd,

guileful opposite. The following pages will be concerned chiefly with exploring that transformation, but I will show, additionally, that Euphiletus' development as a character is inextricable from parallel developments in the speech's handling of issues related to law and legal authority: when Euphiletus the fool becomes Euphiletus the champion, he vests in himself all the powers that formally lie with the jury, and proceeds to defend his crime by denying the right of the jury to judge it. What follows is not a commentary, but because I am explaining how the rhetorical strategy unfolds I necessarily proceed through the speech sequentially.

### The Opening Clause in Context

The first complete sentence of the speech runs as follows:

περὶ πολλοῦ ἂν ποιησαίμην, ὦ ἄνδρες, τὸ τοιούτους ὑμᾶς ἐμοὶ δικαστὰς περὶ τούτου τοῦ πράγματος γενέσθαι, οἷοίπερ ἂν ὑμῖν αὐτοῖς εἴητε τοιαῦτα πεπονθότες. (§1)

I would quite appreciate, gentlemen, your becoming the kinds of jurors for me in this matter that you would be for yourselves if you should suffer the same sorts of things.

Commentators have been noted that the opening three chapters are linguistically exceptional, among the speech's most rhetorically ornate and linguistically complex passages (Todd 2007, 88), but the fact that the content of the opening clause – the idea of the jury imagining themselves in somebody else's place (hereafter “empathetic surrogacy”) – is exceptional as well has received no attention. One reason for the neglect of its content is surely that the idea of imagining oneself in another's place does not raise the sorts of questions or issues that normally interest commentators: it is not a complex argument and sheds no light on the legal, political or social background of the speech or the suit itself. Another reason for that neglect is likely its seeming naturalness, familiarity and intuitiveness: Euphiletus' asking the jury to imagine themselves in his place seems sensible as a legal or moral precept, since identification with the interests of others is fundamental to ethical reasoning;<sup>7</sup> it seems sound as a legal principle, too, since the

---

<sup>7</sup> Thus Dover in *Popular Morality*: “It often happens that if I try to do as I wish I necessarily frustrate what someone else wishes. By the ‘morality’ of a culture I mean the principles, criteria and values which underlie its response to this familiar experience.” (Dover, 1994; p. 3)

same law ought to render the same verdict, whether it be Euphiletus or one of the jury on trial; and it seems prudent as a rhetorical maneuver, since the jury, even if they disapprove of the crime, may be willing to sympathize with the pain and dishonor that led to it. The opening clause seems unproblematic, that is, from the probable perspective of the contemporary Anglo-American reader. The available evidence suggests that the Classical Athenian perspective was rather different.

Citizenship meant the right to participate and initiate in legal actions, but law was binding on the criminal and victim not the juror; the law was, Aristotle tells us (*Rhet.*, 1.15.2ff.), one source of evidence among the many on the basis of which the juror might make his decision.<sup>8</sup> It is widely agreed that the institutionalized amateurism of the Athenian law courts discouraged law's development into a specialized field, preventing in turn the emergence of complex systems of legal thought and legal doctrine; and because Classical Attic written statutes normally define a procedure without defining its terms, written laws themselves tend to leave juror and litigant ample room for interpretation. Classical Attic thought does show a certain respect for the ideal of law's sovereignty, but in practice the Athenian juror was free, if for any reason he saw fit, to vote with or against the law as he understood it. Among the extralegal factors that influenced most a juror's vote, the litigant's perceived social standing seems to have been one of the most important.<sup>9</sup> The man who showed his conduct to be upright, or generous or loyal towards the city, or who showed the absence of similar virtue in his opponent, seems to have stood a better chance of receiving the jury's favor. It may therefore seem obvious that the aim of any *logographos* was to win for

---

<sup>8</sup> See Carey (1994) on the artistic use of artless proofs – the rhetorical use of testimony, contract and law – in the surviving speeches.

<sup>9</sup> Ober (1989) deals in detail with this issue vis-à-vis class. Cohen (1993) 12: "This rhetorical nature of Athenian litigation made it ideal as a democratic mechanism for social control precisely because the courts did not reach decisions through interpretation of legal norms and principles and their application to a particular act. Rather, Athenian courts, as they responded to the speakers' competing attempts to frame the case within a particular characterization of the community's normative repertoire, appear to have rendered judgment in regard to representations about the totality of the transaction of which that particular act was part. This process by its very nature focused upon judgments about the political, social and moral context of the relations of the parties and, therefore, upon what sort of person each of the parties was. On this view, much of the judicial rhetoric which has been too readily dismissed as 'irrelevant' or 'a perversion of the legal process' is really central to the process of judgment as the Athenians conceived it."

his client generally good standing in the hearts and minds of jurors so as to secure their support on a specific legal question, but Classical Athenian legal culture made this work especially pressing and fraught: the speaker who failed to gain control of what seem to us trivial or irrelevant social issues ceded that control, dangerously, to his opponent.<sup>10</sup>

One byproduct of this environment, in which the juror was expected essentially to help friends and hurt enemies, is the frequency with which the speakers of the surviving orations flattery the jury, praise themselves and slander their opponents. Another byproduct is Lysias' strong tendency not to join his speakers to the jury in first-person-plural constructions. The jury is addressed almost exclusively in the second person. This is in some ways surprising. The other orators are not so averse to these first-person-plural constructions, and if cultivating litigant-juror sympathy was truly as vital as I claim, one should expect the speechwriter to seize even the smallest opportunity to create affinity. Moreover, Classical Attic oratory, Lysias' speeches included, is strikingly flexible in how it defines the jury in terms of the inclusiveness or exclusivity of its composition:<sup>11</sup> the jury could be a unit unto itself or identical with and indistinguishable from the city as whole; latter-day *nomotheteis* setting down new doctrines or essentially their own forebears upholding ancient tradition. Despite this flexibility, Lysias almost never formulates the jury in such a way as to include his own speakers (even something as simple and innocuous as "we all believe").<sup>12</sup> In Lysias 12 the damage wrought by the Thirty is not what "we" suffered but rather, separately and distinctly, what Lysias and his family suffered, what the jury suffered, and what the city suffered. Even when a speaker voices confidence in the jury's support, he nevertheless does not address them in their own voice as if he were one of them.

It cannot be known whether the relative absence of the construction from Lysias is an artifact of a bias in the surviving speeches, a meaningless stylistic quirk of the Lysianic corpus, a deliberate choice or

---

<sup>10</sup> See Lanni (2005) on standards of relevance in the Athenian courts; much of what counts as pertinent in an Athenian trial strikes us as prejudicial, irrelevant and objectionable.

<sup>11</sup> See Blanshard (2004) on the separation of jury and demos in practice and their metaphorical conflation.

<sup>12</sup> First-person-plural constructions are more common in *diēgēseis*, but in those cases the construction almost never includes the jury.



an unconscious habit, but there is good reason for tying it to the environment described above. In all Attic oratory, speakers tend to address the jury with great deference. The Athenian juror was notoriously tetchy about his sovereignty, and so speakers tend to offer assurances that the jury is not being led or persuaded, that they are the masters of their own decisions. Litigants sought to downplay any sense that they were powerful, let alone that they believed they had any power over the jury. The role of the speaker was to serve and plead before the jury, not to lead them. Likewise, litigants in the Athenian law courts were expected to show not just that their cases were sound but that they were personally deserving of the jury's support; they had to show themselves to be honorable individuals and salutary as members of the community. The speaker who addressed the jury in the first person implied that the jury's opinion of him did not matter, that he took that opinion for granted, or that his sense of his own self-worth did not depend on their approval. The speaker would thereby give evidence of a kind of flippancy and presumptuousness, of being disengaged from and unconcerned with the jury's view of him. The speaker intent on winning over the jury could not take for granted his friendship with them: he had to allay the doubts raised by his very status as defendant or prosecutor. In short, Lysias' avoidance of these sorts of first-person-plural construction shows caution on the part of the speechwriter, a sense that the litigant (especially the wealthy one) who presented himself as the juror's equal risked being perceived as contemptuous, condescending or presumptuous.

This caution explains also why no other Lysianic *prooimion* employs a formulation of empathetic surrogacy, and why there are so few clear parallels for it in the Lysianic corpus:<sup>13</sup> to suggest that the juror's position was interchangeable with or the same as that of the speaker was to deny the juror's superiority. In its cultural, forensic and Lysianic context, then, empathetic surrogacy as used at the opening of Lysias 1 seems the farthest thing from intuitive or sound. Given that only a fraction of Attic

---

<sup>13</sup> I find only one clear example, at 19.34, which need not be explained away, but it is worth noting that the use of empathetic surrogacy there fits into another peculiar feature of the speech, namely its tendency to introduce arguments by asking jurors to imagine how various scenarios – some of them hypothetical, others historical – would affect various actors.

oratory survives, one cannot know how innovative or unusual the opening clause of Lysias 1 is, if at all, but the surviving speeches suggest that it represents a considerable departure from ordinary practice. We are thus returned to some of the questions with which this section began, albeit reformulated: the use of empathetic surrogacy at the opening of Lysias 1 seems counterintuitive and objectionable on the basis of the available evidence, but would it have seemed so to an ancient reader and a juror? More specifically, would its use at the opening of Lysias 1 have been objectionable to the speech's intended audience? I believe that it would have. The first three chapters of the speech are strange much as the opening sentence is strange, departing from Lysias' usual practices (and from standard practices of Classical Attic oratory) in ways that undermine the initial wish for empathy. This suggests to me that, regardless of how ancient readers actually interpreted the text, its ideal reader would indeed be struck by the opening and object to it.

### **Resisting empathy**

The opening sentence(s) of almost every surviving forensic speech in the Lysianic corpus directly comments on the difficulty or strangeness of the current suit and the speaker's conflict with his opponent. Speakers express shock that the prosecutor would bring suit in an affair in which he himself deserves prosecution (Lys. 3.1); surprise and dismay that the speaker's law-abiding, orderly lifestyle failed to protect him against legal attacks (7.1); surprise that the prosecution spoke off-topic (9.1); concern at the inexhaustibility of the charges, the impossibility of conveying their magnitude, and the difficulty of bringing the speech to a close (12.1ff); confidence tinged with anxiety that the present suit might have been a welcome opportunity for the speaker to earn the city's good will, if it were not for the danger (16.1). Ordinarily these remarks are firm and asseverative. The opening sentence of Lysias 1 is not. Rather than an assertion of a fact about which there is to be no doubt, the speaker voices a weak wish for something that he makes contingent on the juror's willingness to grant it. What the speaker's opening wish conveys, namely the notion of events that would outrage everybody, gestures somewhat in the expected direction, since it suggests the possibility of the crime being an easy one to judge, but it stops far

short of the expected certitude. It should be read, as Usher reads it (Usher and Edwards 1985, 224), in a tone of tentativeness: the optative mood of the main clause drains it of its assertiveness and tempers any sense that that the wish it expresses is in fact a demand, let alone a demand that Euphiletus expects the listener to grant; likewise, the idiom *περὶ πολλοῦ ποιεῖν* casts the clause that follows, which stated directly would be a command or declaration, as a personal feeling, again distancing it from the juror's own wishes.

Euphiletus' tentativeness is surprising, but, as we have seen, there is good reason for it. His use of empathetic surrogacy seems – in its Lysianic, Classical Attic context – quite presumptuous.<sup>14</sup> Other Lysianic speakers do not request empathy so directly, let alone so early in their speeches. Much of a speech will normally have elapsed before the speaker finally is allowed to make arguments that presume on the audience's willingness to identify or sympathize with him. Euphiletus has not provided the jury any grounds for feeling empathy, and so he has no place asking for it. Moreover, that a man like Euphiletus should be the sole Lysianic speaker to request it so directly, let alone so early in his speech, is rather surprising: out of Lysias' thirty-odd defendants and prosecutors involved in legal actions of varying seriousness and scandalousness, Euphiletus is arguably the unlikeliest candidate for empathy and the least deserving of it – least deserving because, although Lysias' speakers often admit to venial flaws, only Euphiletus calls himself a fool and confesses to the crime of which he stands accused, and the unlikeliest candidate because as the cuckolded murderer of a fellow Athenian citizen he carries a humiliation and shame greater than that borne by any other Lysianic speaker.

Another reason why the jury might reject the wish, or at least be puzzled by it, is the difficulty of making clear sense of it. Commentators agree that the opening words and first three chapters as a whole portray Euphiletus as a victim, and are to be understood in terms of the strategy of “inverting the legal

---

<sup>14</sup> The socioeconomic status of Euphiletus may to some extent free him from the kinds of rhetorical constraints that a wealthy litigant would have faced. Speechwriters may have expected jurors wary of the superiority of a wealthy, prominent elites vis-à-vis his socioeconomic inferiors, making it especially important for the elite speaker to signal his inferiority to the jury. A humbler farmer may not need to offer such assurances.

situation” (Eratosthenes the victim and Euphiletus the accused criminal exchange roles, and Euphiletus thereby trades the role of defendant for that of prosecutor).<sup>15</sup> The listener with no prior knowledge of the speech and no prior knowledge of Euphiletus’ plan to take the pose of prosecutor has no reason to believe that the juror’s role as juror concerns a matter other than murder. The juror may be aware that Euphiletus plans to plead justifiable homicide, and that the plea will rest on the accusation of *moicheia* on the part of Eratosthenes, but this strategy neither necessitates nor even allows Eratosthenes’ actions to be presented formally as the central, single legal issue to be decided in the course of the suit. The central legal issue has already been defined. It is the crime of murder. The “suffering” party, properly speaking, is either Eratosthenes or his kin.<sup>16</sup>

Lysianic *prooimia* are often ambiguous, omitting the name of the crime prosecuted<sup>17</sup> and inverting the legal situation.<sup>18</sup> But Lysias 1 is different from potential parallels. First, it does not merely omit the name of the crime. It replaces that unnamed crime with another unnamed one. Second, other speeches that omit the name leave no doubt as to the roles of the parties engaged in the dispute: the speaker of Lysias 3 may not name *pronoia*, but his opening words clearly establish his status as defendant and the status of Simon as prosecutor. Nowhere in the opening sentence of Lysias 1, or in the *prooimion* as a whole, does Euphiletus refer to the prosecution or acknowledge either his defendant status or Eratosthenes’ status as victim. Third, when a Lysianic speaker reverses the legal situation in the

---

<sup>15</sup> See Todd 2007, 46, and Carey 1989, 64.

<sup>16</sup> The verb appearing as the last word of the sentence, *πάσχω*, is often used in Lysias of the suffering of actionable harm or insult.

<sup>17</sup> Speeches that do not name the crime being tried or do not make it clear are Lys. 3, 4, 5, 9, 12, 14, 23, 24, 31.

<sup>18</sup> The tactic of inverting the legal situation is easy to point out but difficult to define. If it is defined strictly as the defense’s assertion that the prosecutor deserves to be prosecuted on the matter being tried, then the list of instances in Lysias will include just Lysias 3. Broadly defined, though, the tactic is very common. The opening of Lysias 5 might be seen as another variety of it: the defendant did no wrong, has never been prosecuted, and faces danger unjustly; the prosecution, not the defense, have done wrong. At the opening of Lysias 12, the speaker claims that the current suit is the opposite of the norm: ordinarily the prosecutor must show his own reason for hatred toward the accused; now, though, the accused must show why he hates the city so much.

*prooimion*, he spells out both the reversal and the reasons for it.<sup>19</sup> Euphiletus does neither. Fourth, other Lysianic *prooimia* reverse some aspect of the litigants' roles.<sup>20</sup> Lysias 1's opening, uniquely in the Lysianic corpus, reverses the roles of criminal (defendant) and victim (non-litigant). The focus of the opening sentence, moreover, is not even the roles of criminal and victim, but rather the roles of Euphiletus and the jury. Nor are their roles properly speaking reversed: the jury is instructed to imagine themselves undergoing another's experiences; Euphiletus does not offer to do the same for them.

It is hardly even clear, until the final two words of the sentence (τοιαῦτα πεπονθότες), that the speaker is actually reversing his and the jury's roles; and even these two words fail to clarify the speaker's meaning. Beyond mischaracterizing Euphiletus as victim (or suggesting that the juror's imagine themselves murdered), the phrase fails to define the crime of which he is apparently the victim: the actions to which the phrase refers are unnamed, having no referent or antecedent. Referents are in fact lacking for all of the key terms of the opening clause (δικαστὰς, τοῦ πράγματος, τοιαῦτα and πεπονθότες), and from the entirety of the first three chapters:<sup>21</sup>

εὖ γὰρ οἶδ' ὅτι, εἰ τὴν αὐτὴν γνώμην περὶ τῶν ἄλλων ἔχετε, ἤνπερ περὶ ὑμῶν αὐτῶν, οὐκ ἂν εἴη ὅστις οὐκ ἐπὶ τοῖς γεγενημένοις ἀγανακτοίη, ἀλλὰ πάντες ἂν περὶ τῶν τὰ τοιαῦτα ἐπιτηδυνόντων τὰς ζημίας μικρὰς ἡγοῖσθε. καὶ ταῦτα οὐκ ἂν εἴη μόνον παρ' ὑμῖν οὕτως ἐγνωσμένα, ἀλλ' ἐν ἀπάσῃ τῇ Ἑλλάδι· περὶ τοῦτου γὰρ μόνου τοῦ ἀδικήματος καὶ ἐν δημοκρατίᾳ καὶ ὀλιγαρχίᾳ ἡ αὐτὴ τιμωρία τοῖς ἀσθενεστάτοις πρὸς τοὺς τὰ μέγιστα δυναμένους ἀποδέδοται, ὥστε τὸν χεῖριστον τῶν αὐτῶν τυγχάνειν τῷ βελτίστῳ· οὕτως ὃ ἄνδρες, ταύτην τὴν ὕβριν ἅπαντες ἄνθρωποι δεινοτάτην ἡγοῦνται. περὶ μὲν οὖν τοῦ μεγέθους τῆς ζημίας ἅπαντας ὑμᾶς νομίζω τὴν αὐτὴν διάνοιαν ἔχειν, καὶ οὐδένα οὕτως ὀλιγώρως διακεῖσθαι, ὅστις οἶεται δεῖν συγγνώμης τυγχάνειν ἢ μικρᾶς ζημίας ἀξίους ἡγεῖται τοὺς τῶν τοιούτων ἔργων αἰτίους· (§1-3)

<sup>19</sup> The speaker of Lysias 3 explicitly says that Simon deserves to be prosecuted in the matter concerning which he has brought suit. The speaker of Lysias 7 implies that his law-abiding lifestyle should have protected him, and that in the future not even the innocent will be safe from prosecution.

<sup>20</sup> Again, the tactic is common, but takes a variety of forms; in Lysias, every instance of it, apart from that of Lysias 1, involves an inversion in the roles of the parties at trial. In several cases there is no prosecutor against whom the defense can define itself, such as for the speaker of Lysias 17, who is laying claim to property confiscated by the Athenian treasury.

<sup>21</sup> No referents are provided for any term pertaining to the crime or suit: “this same judgment” (τὴν αὐτὴν γνώμην); “what happened” (τοῖς γεγενημένοις); “those who practice this kind of thing” (τῶν τὰ τοιαῦτα ἐπιτηδυνόντων); “the penalties” (τὰς ζημίας); “this sole violation” (περὶ τοῦτου γὰρ μόνου τοῦ ἀδικήματος); “the same vengeance (ἡ αὐτὴ τιμωρία); “this dishonor” (ταύτην τὴν ὕβριν); “this wrong” (ταύτην τὴν ὕβριν); “the punishment” (τῆς ζημίας); “the same opinion” (τὴν αὐτὴν διάνοιαν); “forgiveness” (συγγνώμης); “a small penalty” (μικρᾶς ζημίας); “the men responsible for such acts” (τοὺς τῶν τοιούτων ἔργων αἰτίους).

I know full well, after all, that if you had the same opinions about others as you have about yourselves, there wouldn't be anyone who wouldn't be angry about what happened. Rather, everyone would think the punishment for those who do this sort of thing meager. And this would be the considered view not just among yourselves but for all Hellas; for this is the only crime for which, under oligarchy and democracy, the same redress is given to the most powerless against the most powerful, so that the weakest man enjoys the same rights as the strongest. Thus, gentlemen, all men consider this the worst *hybris*. About the magnitude of the punishment I think you all agree, and I think no one takes it so lightly that he believes it deserves to be forgiven, or thinks that the men guilty of such deeds deserve a small penalty [or fine]. Commentators are unanimous in their view that Euphiletus is, and must be, discussing *moicheia*;

“logically this must refer to adultery” (Todd 2007, 89). But logic demands no such thing. It demands that the speaker be referring to murder. The opening sentence makes no mention of *moicheia* or of Eratosthenes the *moichos*. Rather, it points the jury's roles as “jurors for [Euphiletus] *in this matter*” (ὁμᾶς ἐμοὶ δικαστὰς περὶ τούτου τοῦ πράγματος), which can only be their role as judges in the current trial, which is on the charge of murder. The relative clause οἷόντις ἂν ὑμῖν αὐτοῖς εἴητε τοιαῦτα πεπονθότες is thus incongruous and perplexing, because “in this matter” Euphiletus is not the victim.

One could protest my reading of the opening sentence on the grounds that if the speech truly was written for a historical suit, then the prosecution, speaking first, will already have offered refutation of the claim of justifiable homicide, and that the jury therefore expects Euphiletus to take the posture of victim of *moicheia*. If this is so, then arguably the juror would grasp the meaning of the opening as written. Here again it is important to note some of Lysias 1's unusual features. As noted above, the opening clause is unconventional partly in its tentative tone. More unconventional is the fact that it makes no reference to the actual process of litigation currently underway nor any mention of the people prosecuting Euphiletus.<sup>22</sup> Lysias' other speakers, even when they fail to name of the crime at issue, avoid confusion by providing that information, i.e. defining those roles; the openings of speeches provide the information that the imagined juror is presumed already to know about the suit. Obviously we do not know whether or what kind of prefatory remarks accompanied published speeches, but it is telling that the Lysianic speeches' opening remarks reliably serves as their own prefaces: they almost always supply just enough

---

<sup>22</sup> Similarly, as noted above (see page 24), Euphiletus' request that the listener become (γενέσθαι) a certain kind of juror gives the impression that the opening of the speech is the opening of the suit, with their roles as jurors starting when Euphiletus begins his defense.

background information for the reader to have some sense as to his or her imaginary role as juror, the speaker's imaginary role in the suit, and the legal setting of the speech. By furnishing this information casually and in passing as if it can be taken for granted by the juror, the speech unobtrusively constructs the imagined legal setting for the reader.

To provide contextual cues in this fashion at the opening of a speech, then, is a convention of written forensic oratory. It enables the speechwriter, when he alludes to the things the fictional audience already knows (or should know), to supply the very information that his actual audience (his audience of readers) needs to know. This technique tells us nothing about how written speeches relate to their spoken, delivered counterparts (assuming any version of the speech was ever delivered), and so does not answer the question of how an informed juror would react upon hearing Euphiletus' opening remarks, but it shows a sense on the part of the speechwriter that the reader – the consumer of written oratory, separately from the historical juror – needs information about characters, context and setting. The first three chapters of *Lysias 1* systematically withhold that information. The reader, it seems, is expected to supply everything for him or herself. But because the speechwriter does not specify what the reader knows, there can be no answer to the question of *what* the knowledgeable reader is expected to know: the opening three chapters take so much for granted and provide so little context that even the most basic questions – who is prosecuting, who is defending and what the crime is – become unanswerable for the first-time reader.

Making this lack of clarity all the more problematic is the fact that the suit for which *Lysias 1* is written is unusually legally complex: the speaker will defend himself against the crime as charged by confessing to it while simultaneously claiming legal sanction, a sanction predicated on the charge of a separate crime committed by his victim. This complexity makes *Lysias 1* among the only suits in the Lysianic corpus in which the omissions and inversions described above actually *could* so confuse the reader in need of context. Indeed, *Lysias 1* is among the only Lysianic speeches in which such omissions could confuse even the reader or juror who already knows the information withheld: as noted, the reader who is aware that Euphiletus will plea justifiable homicide will expect him to mention *moicheia*, even to make it his focus; but that reader knows that Euphiletus will not discuss *moicheia* alone. He expects

discussion of *moicheia* to be integrated into discussion of the charge of murder. To speak, as Euphiletus does, as if the suit concerns “this one crime” on whose severity and punishment all men agree is fundamentally to misrepresent both the suit itself and his stance as defendant: the reader already familiar with the speech knows that the suit in fact concerns essentially two crimes.<sup>23</sup>

One could challenge this reading of the *prooimion* also on the grounds that mention of the murder and of the speaker’s status as defendant would have invited the juror’s disapproval; according to this view, vagueness and oversimplification may be strategic and therefore unproblematic. It is true that open admission of the defendant’s status and the name of his crime might have been dangerous (and I will return to this), but the vagueness of the opening three chapters does not amount to oversimplification. The issues the speaker raises – the relative severity of crimes, the relative severity of punishments, and how the severity of punishment relates to the severity of crime – are not merely among the most abstract and complex topics discussed in any Lysianic *prooimion*; they are also the very legal questions that the suit itself raises and that Euphiletus will address after the *diēgēsis* (as will later be discussed in greater detail), namely the relative severity of two crimes and the appropriate punishment for the worse one. In short, the problem with the first three chapters of the speech boils down to this: the knowledgeable juror should know that there is more than one crime to consider, and so he should be confused that Euphiletus acknowledges only one (and refuses to specify which one he is discussing); the ignorant juror should wonder why whether Euphiletus is acting like a prosecutor in a suit in which he is the defendant; and the reader, lacking any context at all, has not the faintest idea what the suit is about, apart from the fact that the speaker claims to have suffered some unspeakable, nameless wrong. Certain other Lysianic speakers, as noted, say that they can take for granted the jury’s support on specific the matter at hand. No other speaker claims universal accord on an abstract legal principle that he fails to name or define.

---

<sup>23</sup> Depending on how one reconstructs the reading experience, Euphiletus’ emphasis on “this one crime,” worse than all others, may even be a tongue-in-cheek acknowledgement of the confusion that the speaker is sowing: by inveighing so hyperbolically against that one crime, he may subtly encourage the reader to realize that the defendant has not explained what that crime is, or to realize that the speaker should in fact be discussing two crimes.



One could protest my reading, further, on the grounds that the peculiarities of the case call for an unusual tack. Perhaps the man in so exceptional a legal predicament requires an exceptional defense. I have tried to show, however, that the opening of Lysias 1 is exceptional in ways that do not obviously help him, may hurt him, and violate otherwise ironclad rules of forensic oratorical etiquette. If a willingness to violate that etiquette were more evident in more of Lysias' surviving speeches, I would be more willing to grant it as a viable explanation of the first three chapters' peculiarities. Moreover, my reading of the *prooimion*, although somewhat complex to argue, is simpler than the standard reading. My essential point is that Lysias' other speakers frame their listener's understanding of their suits. Euphiletus in the opening three chapters does not. Thus the uninformed reader, as imaginary juror, has no idea what the suit is about in the speech's first three chapters. Meanwhile, the imaginary juror familiar with the background of the suit, or the written speech's re-reader who knows the rest of the speech and so knows what the speaker will argue, finds the opening perhaps even more confusing: Euphiletus does not merely fail to set out the basic elements of the suit and his defense; he grossly misrepresents them. Advocates of the standard reading must explain why the author of the speech is so intent on withholding all the information it ought to provide (and that a speech normally provide) and how the reader or listener could reasonably be expected to fill so many gaps for him- or herself – especially when other Lysianic speakers do not expect the listener to be capable of this.

### A Problem of Perspective

If the first three chapters of the *prooimion* are strange because they assumes so much knowledge on the part of the jury while providing so little, the *prooimion* at the start of §4 is strange for the opposite reason. It assumes no knowledge on the part of the jury:

ἡγοῦμαι δέ, ὦ ἄνδρες, τοῦτό με δεῖν ἐπιδειξαι, ὥς ἐμοίχευεν Ἐρατοσθένης τὴν γυναῖκα τὴν ἐμὴν καὶ ἐκείνην τε διέφθειρε καὶ τοὺς παῖδας τοὺς ἐμοὺς ἥσχυνε καὶ ἐμὲ αὐτὸν ὕβρισεν εἰς τὴν οἰκίαν τὴν ἐμὴν εἰσιὼν καὶ οὔτε ἔχθρα ἐμοὶ καὶ ἐκείνῳ οὐδεμία ἦν πλὴν ταύτης, οὔτε χρημάτων ἕνεκα ἔπραξα ταῦτα, ἵνα πλούσιος ἐκ πένητος γένωμαι, οὔτε ἄλλους κέρδους οὐδενὸς πλὴν τῆς κατὰ τοὺς νόμους τιμωρίας. (§4)

Gentlemen, what I think I have to show is this: that Euphiletus seduced my wife and ruined her, and shamed my children and dishonored me by invading my home; and that there wasn't any prior animus

between us; and that neither for money did I do this, to go from rags to riches, nor for any profit other than vengeance according to the laws.

As noted, Lysias' speakers, in introducing charges and countercharges, normally allude to some element of the legal action currently unfolding; that is, the speaker refers to some element of the trial as if it were familiar to the listener. The framing device used above (ἡγοῦμαι δέ, ὃ ἄνδρες, τοῦτό με δεῖν ἐπιδείξαι, ὥς) does something rather different. Subtle linguistic cues hint either that the charges and countercharges are being disclosed for the first time or that the disclosure of charge and countercharge is altering the reader's understanding of the suit – which it should not, if the prosecution have already spoken and addressed the suit's various charges and countercharges. The first and most obvious cue is the verb ἐπιδείκνυμι. Its appearance is in some respects unremarkable, since the verb appears 23 times in the forensic speeches of Lysias. In 7 instances it appears in or near the *prooimion*.<sup>24</sup> Of its 23 uses, 11 subordinate the verb in the infinitive to a verb of thought or effort ("it is right, proper, necessary or possible to show"), and in 9 instances the verb's object is clausal: 2 participial or adjectival constructions,<sup>25</sup> 1 indirect question,<sup>26</sup> 6 indirect statements.<sup>27</sup> Of those that use indirect statement, 3 introduce the clause with ὥς,<sup>28</sup> of which 2 introduce the subordinate clause with a demonstrative, both using τοῦτο.<sup>29</sup> The construction Euphiletus uses is therefore uncommon but not necessarily marked. At the same time, though, it is a more intensive form of the verb's available constructions: the infinitive ἐπιδείξαι is introduced not, as it normally would be, by a single verb but rather by two verbs (ἡγοῦμαι and δεῖν); the demonstrative calls attention to the coming clause, creating anticipation for the thing about to be disclosed; and the subordinate clause with ὥς marks off the subordinate clause from the main clause, giving it greater prominence than the bare direct object or participial phrase would have. The construction thus calls especial attention to the idea, the promise, of disclosure. In so doing it creates an

<sup>24</sup> 1.4, 12.2, 24.1, 28.9, 16.3, 18.3, 14.1

<sup>25</sup> 9.18, 20.1

<sup>26</sup> 28.10, 13.62

<sup>27</sup> 28.6, 28.15, 30.15, 16.3, 29.13, 12.56

<sup>28</sup> 16.3, 28.15, 1.4

<sup>29</sup> 1.4, 16.3

expectation for what is about to be disclosed. If the things to be disclosed are already known to the listener, and especially if the first three chapters have already supplied them, there should be no tension or expectation. The framing device, calling so much attention to the imminent act of disclosure, would be peculiar, flat and out of place.

The opening of Lysias 16 uses a similar construction to similar effect. In the first two chapters of the speech Mantisheus tells the jury that if it were not for the danger posed by the possibility of a judgment against him he would be grateful to his prosecutors, since the present *dokimasia* allows him give an account of his life. So confident is he in himself, he adds, that he believes even the juror hostilely disposed toward him will change his mind and think better of him in the future. He goes on,

ἀξιῶ δέ, ὦ βουλή, ἐὰν μὲν τοῦτο μόνον ὑμῖν ἐπιδείξω, ὥς εὖνους εἰμι τοῖς καθεστηκόσι πράγμασι καὶ ὥς ἠνάγκασμαι τῶν αὐτῶν κινδύνων μετέχειν ὑμῖν, μηδέν πῶ μοι πλέον εἶναι. ἐὰν δὲ φαίνωμαι καὶ τὰ ἄλλα μετρίως βεβιωκώς καὶ πολὺ παρὰ τὴν δόξαν καὶ παρὰ τοὺς λόγους τοὺς τῶν ἐχθρῶν, δέομαι ὑμῶν ἐμὲ μὲν δοκιμάζειν, τούτους δὲ ἡγεῖσθαι χείρους εἶναι. πρῶτον δὲ ἀποδείξω ὥς οὐκ ἵππευον [οὔτ' ἐπεδήμουν] ἐπὶ τῶν τριάκοντα, οὐδὲ μετέσχον τῆς τότε πολιτείας. (16.3)

I think it right, members of the council, to show you that I do not claim any special merit, members of the council if I demonstrate to you merely that I am loyal to the existing constitution and have been compelled to share in the same dangers as you. But if it is clear that I have lived an orderly life in other respects also, contrary to the statements of my enemies, I ask that you approve me at my *dokimasia* and think worse of my opponents. I shall demonstrate first that I did not serve in the cavalry [and was not even present in Athens] under the Thirty, nor did I have a share in the constitution that existed at that time.

The contents of the ὥς clause introduced by ἐπιδείκνυμι answer the questions that the first two chapters of the speech raise: what areas of his life are the ones undergoing review, and why does he believe himself deserving of goodwill? That is, the first two chapters create anticipation and a desire for clarification, which the third chapter provides; the framing device signals imminent clarification. There is, I believe, a similar sense of anticipation created by the first three chapters of Lysias 1's *prooimion* – raising questions, creating a desire for clarification. The framing device in Lysias 1, as in Lysias 16, assures the listener that he will shortly receive clarification: what the speaker suffered, what crime is so terrible, what punishment it deserved and justly received.

## Psychology and Psychological Language

Lysias' *prooimia* frequently make direct emotional appeals and ascribe emotions to speakers, jurors and opponents: the speaker of Lysias 3 repeatedly refers to his emotional state (especially the suffering that his misfortunes, including the current suit, have created) and that of the jury; the speaker of Lysias 7 highlights his surprise, worry and outrage, and directs the jury to recognize the malice of his accusers; the openings of Lysias 12-14 all focus on the anger that the speaker feels toward his subject, that all should feel, and the hatred that the accused has shown for the city or standards of good behavior. Lysias 1 again defies the pattern. After the first sentence, the topic and focus of §1-3 are the (potential, hoped-for) feelings and thoughts of the jury and all men. Apart from the desire for empathy, nothing is revealed about Euphiletus' emotional state, nor is there any discussion of the criminal's mentality. The first three chapters focus instead on juror psychology. At the start of chapter 4 this suddenly changes. The verb ἡγοῦμαι, like the wish that opens §1, briefly centers our focus on Euphiletus' own thoughts, but his diction thereafter ceases to be that of emotion, judgment, belief or evaluations,<sup>30</sup> and becomes that of fact.

This sudden shift in perspective is unusual. Whereas discussion of thought and feeling in Lysias' *prooimia* ordinarily mingles juror, speaker and opponent, Lysias 1 neglects completely the psychology of the opponent, while that of juror and that of speaker are kept strictly separate. So, too, the conventional Lysianic speaker ordinarily incites his audience's feelings, or refers to his own feelings or thoughts, or those of his opponent, in regard to specific issues or individuals related to the case. The first three chapters of Lysias 1 produce confusion by their very emotionality and psychologizing: in discussing how the jury feels and ought to feel, Euphiletus is using a discursive style more appropriate to specifics (pointed at deictically if not named) rather than unnamed abstractions. To put this another way, what the reader expects, and what other speeches provide, is discussion of a specific *instance* of crime, the criminal act being tried. What Lysias 1 discusses in its first three chapters is a *type* of crime worse than all others. Here again the *prooimion* of Lysias 1 is seen to be oddly abstract, divorced from the concrete details of

---

<sup>30</sup> Euphiletus does use the words ὑβρίζειν and αἰσχύναειν, which are not emotionally neutral, but they are primarily verbs of action.

litigation. Rather than directing the listener to think about what he has seen or knows about the current suit and parties involved, the speech turns the juror's thoughts inward toward his own thoughts or beliefs, things he supplies not from experience with this particular suit but from experience with suits and law more generally.

Lysias' speakers tend moreover to incite emotion in relation to the wrongs they themselves have suffered. And yet at the moment when this should happen, namely when Euphiletus reveals the full measure of his suffering (at the start of §4) – and thus when his emotions ought to be strongest and his attempts to incite the jury's outrage most strenuous – he instead meticulously avoids incitement. This is not to say that the bare factualness of his words prevents them from prompting an emotional response. The jury can hardly avoid recognizing that Euphiletus is presenting himself as wronged and still suffering the shame of dishonor. But the orators tend more clearly to guide the reader's response.<sup>31</sup>

### **Isolating Euphiletus, unifying the jury, laying the groundwork for the fool**

In addition to a change in perspective from juror to speaker, the start of §4 also marks a change in topic, first, from crime in the abstract to the specific actions of Eratosthenes, and, second, from Eratosthenes' actions to the actions of Euphiletus. The two changes are closely intertwined: the topic of §1-3 is legal judgment and legal reasoning, which are the province of the jury, and so these chapters center on the juror's thinking; the topic of §4-5 is the speaker's victimization, which is the province solely of the speaker, and so these chapters center on his experience. Superficially this seems a natural, even

---

<sup>31</sup> The rhetorical effect of Euphiletus' listing of charges is perhaps similar to that observed by Connor in Thucydides, who used "descriptions that avoided moral rhetoric and made the audience visualize what was happening" (Connor, 1984; 7). In connection, Connor quotes Meinecke:

Although the historian may, in form, abstain from value judgments of his own, they are there between the lines, and act as such upon the reader. The effect, as in Ranke, for example, is often more profound and moving than if the evaluation were to appear directly in the guise of moralizing, and therefore it is even to be recommended as an artifice. The historian's implicit value judgment arouses the reader's own evaluating activity more strongly than one which is explicit. (Connor, 1984; 7-8)

Euphiletus conveys his suffering precisely by allowing events to speak for themselves.

inescapable way to structure the discussion. As noted, though, Lysias' speakers do not normally treat the psychologies of juror, speaker and opponent separately. But neither, of course, do they use empathetic surrogacy. In fact the use of the trope suggests by itself an unusual approach to psychology: it indicates particular interest in the relationship of juror and speaker. From that vantage point, the *prooimion*'s unusual psychological structure follows naturally from its unusual opening; as one might expect, the thinking of juror and speaker are in the fore, and Euphiletus' opponents are ignored.<sup>32</sup> However, as discussed above, the use of empathetic surrogacy is surprising precisely because it pleads for an affinity between juror and speaker that Lysias' other speakers never dare presume.<sup>33</sup> Empathetic surrogacy, that is, calls for the perspectives of juror and speaker neither to be kept separate nor even to mingle; it calls for them to become one. The *prooimion* does precisely the opposite: the jury is discussed in §1-3; the speaker in §4-5. From this vantage point, the psychological structure of the *prooimion* – in separating the two – does the opposite of what the opening wish demands: juror and speaker, rather than being joined, are strictly separated.

The reason for this begins to become apparent only when it is realized that, in addition to separating the psychologies of juror and speaker, the *prooimion* actually shows them to be incompatible. Wohl (2010) notes the tendency in classical Athenian forensic oratory for juridical discourse to permeate the thinking of the speaker and, as a result, the mental world that he constructs for his listeners. In precisely this vein, the first three chapters make law the organizing principle of the social, civic and ethnic spheres, the sole thing from which, in essence, all things Greek are derived. As the *prooimion* unfolds, the scope of agreement and inclusiveness among men incrementally widens, as law unifies first the courtroom,<sup>34</sup> and then Greece,<sup>35</sup> and finally democracy and oligarchy, political systems so thoroughly

---

<sup>32</sup> The topic of universal agreement, too, nicely follows from the wish for empathy.

<sup>33</sup> In Grau's reading of the speech, Euphiletus' use of what I am calling empathetic surrogacy sums up the speech's rhetorical strategy: through the *diēgēsis*, Grau says, the juror eventually comes to see himself in Euphiletus. But the jury never identifies with Euphiletus. In the following section I will show that it is Euphiletus who identifies with the jury.

<sup>34</sup> οὐκ ἂν εἴη ὅστις οὐκ ἐπὶ τοῖς γεγενημένοις ἀγανακτοίη (§2)

<sup>35</sup> καὶ ταῦτα οὐκ ἂν εἴη μόνον παρ' ὑμῖν οὕτως ἐγνωσμένα, ἀλλ' ἐν ἀπάσῃ τῇ Ἑλλάδι (§2)

at odds that they disagree about literally every other offense.<sup>36</sup> This formulation of law, although it lays claim to a sort of universalizing inclusiveness, demands certain exclusions. The criminal has no place in the imagined community; his existence is acknowledged only to the extent that, by impinging on the community's well-being, he defines its limits. But Euphiletus is excluded as well; for when he guides the jury to agree with "all men," he guides them toward a shared anger at "what happened" and toward consensus on the penalty it deserves. There is no indication that the men making this collective determination have, or are to imagine having, "suffered the like," as he asks the jury in his opening words to imagine. To the contrary, the men making this determination stand apart from and above those who are wronged, using legal reasoning for the benefit of the "weak."<sup>37</sup> Victims of crime are relegated to a position inferior to and less secure than that of the jury.

The bond of power and security that unites the jury thus limits the affinity they can feel with Euphiletus, because his status as victim reveals a weakness they do not share. If the jury feels sympathy with his plight, and if they do so on the terms Euphiletus advises, they therefore do so, as judges, from the position of the external, superior observer. They are not guided to identify, let alone empathize: Euphiletus does not, as the speaker of Lysias 3 does, present his own experience as an example of universal human experience (3.4), nor does he say, as the speaker of Lysias 7 does, that he fears for the jurors' own well-being (7.1).<sup>38</sup> Euphiletus' suffering, like his humiliation, is strictly his own. Thus at §4, as Euphiletus draws closer and closer to discussion of his own crime, his language shifts from assertion to negation.<sup>39</sup> The killing of Eratosthenes is not presented as an expression of the jury's will, as it will be after the *diēgēsis*. The repeated use of negation evokes, to the contrary, unwillingness even on the part of

---

<sup>36</sup> περὶ τούτου γὰρ μόνου τοῦ ἀδικήματος καὶ ἐν δημοκρατίᾳ καὶ ὀλιγαρχίᾳ ἡ αὐτὴ τιμωρία (§2)

<sup>37</sup> The orators do not typically associate the jury with weakness. See Ober (1989).

<sup>38</sup> He will express this fear later in the speech (§36), but he is able to do so precisely because he has made himself a stand-in for the jury.

<sup>39</sup> καὶ οὐτε ἔχθρα ἐμοὶ καὶ ἐκείνῳ οὐδεμία ἦν πλὴν ταύτης, οὐτε χρημάτων ἔνεκα ἔπραξα ταῦτα, ἵνα πλούσιος ἐκ πένητος γένωμαι, οὐτε ἄλλους κέρδους οὐδενὸς πλὴν τῆς κατὰ τοὺς νόμους τιμωρίας. ἐγὼ τοίνυν ἐξ ἀρχῆς ὑμῖν ἅπαντα ἐπιδείξω τὰ ἐμαυτοῦ πράγματα, οὐδὲν παραλείπων, ἀλλὰ λέγων τάληθῇ· ταύτην γὰρ ἐμαυτῷ μόνην ἡγοῦμαι σωτηρίαν, ἐὰν ὑμῖν εἰπεῖν ἅπαντα δυνηθῶ τὰ πεπραγμένα. (§4)

Euphiletus himself. As killer he is an unhappy victim constrained by misfortune, not the praiseworthy avenger he will eventually become. This air of unwillingness and victimization even extends to his role as defendant; he gives no indication, as he will at the end of the speech, that his exoneration is or should be inevitable. To the contrary, he muses at §4 how he might in fact be convicted: if he fails to explain himself, there will be no hope for rescue (*sōtēriān*) and nobody to blame but himself.<sup>40</sup>

At the start of §4, then, in assuming the role of the victim, he can no longer identify with the jury. He simultaneously ceases to solicit their support, and makes no further mention of universal agreement as to the magnitude of the wrong or shared anger toward the man responsible for it. The wrong and the outrage that it causes become strictly his own. Later in the speech he will present the killing of Eratosthenes as an action commanded by and on behalf of the jury. In the *prooimion* he paints a very different picture:

οὔτε χρημάτων ἔνεκα ἔπραξα ταῦτα, ἵνα πλούσιος ἐκ πένητος γένωμαι, οὔτε ἄλλου κέρδους οὐδενὸς πλὴν τῆς κατὰ τοὺς νόμους τιμωρίας.

It wasn't for money that I did this, to go from rags to riches,<sup>41</sup> nor for any other gain than the vengeance granted by law. (§4)

The vagueness of the wording (ἔπραξα ταῦτα) presumably reflects an effort to avoid the blame that Euphiletus might face if he openly confessed to the killing of Eratosthenes. Simultaneously, though, Euphiletus is accepting more responsibility for the deed, and a more personal form of responsibility, than he will accept at other time in the speech. Here the killing is an action he himself performed on his own behalf for his own reasons; it is the *timōria* that the law is said at §2 to grant to the weak against the strong, a vengeance that personally profits the one who exacts it. This is in striking contrast to the arguments that the speaker will make later in the speech, where he insists on his lack of choice and responsibility, and stresses the civic value of the killing, “not privately on my own behalf but on behalf of

---

<sup>40</sup> ἐγὼ τοίνυν ἐξ ἀρχῆς ὑμῖν ἅπαντα ἐπιδείξω τὰ ἑμαυτοῦ πράγματα, οὐδὲν παραλείπων, ἀλλὰ λέγων τάληθῃ· ταύτην γὰρ ἑμαυτῷ μόνην ἡγοῦμαι σωτηρίαν, ἐὰν ὑμῖν εἰπεῖν ἅπαντα δυνήθῃ τὰ πεπραγμένα. (§4)

<sup>41</sup> I use Carey's translation of the expression πλούσιος ἐκ πένητος (1989, 66).



the entire city.”<sup>42</sup> Late in the speech, that is, he denies responsibility but claims all the credit; at §4 he asks for no credit – the power and justness of law lie with the jury – but accepts responsibility. Euphiletus’ actions, private in the *prooimion*, will become civic. Euphiletus will undergo the same change. After the meeting with the old woman, he will shed the persona of the helpless, victimized, cuckolded husband, and assume that of champion and executioner. After this change takes place, the speech’s discussion of *moicheia* will correspondingly ignore the issue of Euphiletus’ victimization and instead foreground the necessity of Eratosthenes’ punishment and its civic utility, necessity and praiseworthiness. Euphiletus’ civic dimension will be his essence later in the speech. In the *prooimion* he lacks any civic dimension. He is strictly a private individual.

The *prooimion* has given the jury reason to reject his opening request for empathy: Euphiletus asks the jury to imagine themselves in his role, and yet proceeds to show that his individual role as victim and his private role as taker of vengeance are incompatible with their role as jurors. How to make sense of this? That the *prooimion* should use the tools of persuasion not to the benefit of the speaker but to his apparent detriment seems to defy all reason. As we have seen, though, the *prooimion* is constantly in tension with itself and its listener. It violates generic conventions. It breaks rules of etiquette. It obscures and distorts the suit. That in the final analysis it should be its own disproof, it seems to me, is less an additional problem than a hint as to a solution: the strangeness of the *prooimion* is not meant to go unnoticed, because the juror is expected neither to assent to Euphiletus’s wish nor to approve of his actions. In this way, the *prooimion* performs a valuable rhetorical function: as noted, Lysias’ speakers not infrequently confess to venial flaws; Euphiletus is the only Lysianic speaker who confesses to the crime accused and blames himself for his own misfortune. The first half of the *diēgēsis*, through self-critical asides, encourages the juror to regard Euphiletus as culpable for his wife’s affair. The first half of the *diēgēsis*, that is, presumes a willingness on the part of the juror to view Euphiletus contemptuously or disapprovingly as the juror’s inferior. The *prooimion* cultivates that willingness.

---

<sup>42</sup> Ἐγὼ μὲν οὖν, ὃ ἄνδρες, οὐκ ἰδίαν ὑπὲρ ἑμαυτοῦ νομίζω ταύτην γενέσθαι τὴν τιμωρίαν, ἀλλ’ ὑπὲρ τῆς πόλεως ἀπάσης. (§47)

### Euphiletus' metamorphosis in the *diēgēsis*

This section describes the change that Euphiletus as a character undergoes at the midpoint of the *diēgēsis*. I should begin by noting that the role Euphiletus plays in its first half, prior to the encounter with the old woman, is very much his role at the end of the *prooimion*. At the end of §5, he presents himself as a helpless, humiliated victim, and raises the prospect that the jury will rule against him. In the first half of the *diēgēsis*, too, he is found to be a helpless, humiliated victim (that of Eratosthenes and his wife's scheming); and in self-abusive asides, he encourages the jury to look down on him, to recognize that they are his superiors. The first half of the *diēgēsis* thus presents the listener with the Euphiletus whom commentators have regarded as his essential self: the bumbling, naïve husband. As noted, after §14 there is no further evidence of naïveté, no additional self-critical asides or insinuations of culpability. The reason for this is that after the encounter with the old woman, Euphiletus is no longer his naive, bumbling self. The encounter with the old woman in fact dramatizes the moment of change, as he sheds the qualities that made him a victim and acquires those that make him an avenger and champion of law. Alerted to the existence of the affair, he tells the jury,

ἐγὼ δ' εὐθέως ἐταραττόμην, καὶ πάντα μου εἰς τὴν γνώμην εἰσῆει, καὶ μεστὸς ἦν ὑποψίας (§17)

Straightaway I was thrown into confusion, and everything started flooding into my mind, and I was filled with suspicion

Usher's reading of the passage rightly identifies it as crucial to our understanding of the speaker: "It is as if Euphiletus' character suddenly reveals its other side: naive trust gives way to righteous anger" (Usher and Edwards 1985, 224). But I would modify Usher's reading in several respects. First, there is no mention of anger.<sup>43</sup> The change that Euphiletus undergoes is strictly intellectual: the affair is disclosed, confusion gives way to realization, and realization gives way to suspicion. Second, the encounter does not illustrate another side of the character; after suspicion dawns on Euphiletus, no vestige of his prior

---

<sup>43</sup> Nor is there any reason to believe that anger is essential of his character. Usher's view that Euphiletus is an angry, impulsive figure has no basis in the text.

mentality remains. The traits that previously defined him (naïveté, weakness, negligence, stupidity) are permanently replaced by their opposites (suspicion, mistrust, awareness). Indeed, Euphiletus' first order of business after the encounter with the old woman is to turn the tables on the slave girl, by tricking her, leading her to a friend's house on the pretext of a trip to the agora so as to force her cooperation. This is not another aspect of the fool. It is his keen, guileful mirror image. Third, Usher's reading of Euphiletus' moment of realization mischaracterizes the role of emotion more generally in the *diēgēsis*. Emotionality manifests strictly prior to the encounter with the old woman, and is in every instance evidence of the flaws or weaknesses that permitted the affair and obstructed its detection: references to contentment evoke a false sense of security (§6, 10, 13); the speech's one reference to anger confirms the ease of with which Euphiletus' wife manipulates him (§12). If ease of emotional arousal is closely tied to ease of manipulation, Euphiletus' suspicion should render him immune to such provocation, and this is precisely what we find: after the meeting with the old woman, and for the duration of the *diēgēsis*, Euphiletus is the very model of equanimity.

Reversals in Euphiletus' intellectual and emotional disposition are paralleled by a host of other reversals.<sup>44</sup> Before the encounter with the old woman, he is (1) isolated from men; (2) strictly in the company of women; (3) found only in or returning to the *oikia*; (4) dominated by his wife; and (5) unaware of the affair. After the encounter, he is (1) almost exclusively in the company of men; (2) never lacks the company of a male ally when women are present; (3) is seen exclusively in social or civic spaces or in private spaces that have become civic spaces; (4) is not dominated by his wife but rather dominates others; and (5) is fully aware of the affair. The thematic structure is plain to see: the female, familial and private, dominant in §§6-14, is, in §§15-26, conquered and brought under the control of the male, social and public.<sup>45</sup> Before the encounter with the old woman, Euphiletus' kin group contracts

---

<sup>44</sup> On page 62-3 I have included tables summarizing the reversals present in the *diēgēsis*.

<sup>45</sup> As Porter notes, Euphiletus' decision for the men's and women's quarters trade places (§§9-10) spatially represents the reversal in power between husband and wife, as Euphiletus' wife gains control over him by literally taking his place, putting him in the more passive role expected of a woman; the discovery of a house fitting the description of Euphiletus' domicile (Morgan 1982) strengthens the idea that such an arrangement might have been

(with the deaths of his mother and brother-in-law); after the encounter, he forms a social network (in the first half of the *diēgēsis* there are no references to friendship or a life outside the home); his social network then expands, with each episode involving some kind of interaction among men, eventually leading to the capture and punishment of the adulterer.<sup>46</sup> When the male, social and public come to the fore, moreover, Euphiletus' actions suddenly acquire an newly civic and legalistic dimension: after the encounter with the old woman, he exercises a number of the rights he enjoys as full citizen, all of them concerned with law and legal procedure: the interrogation of the slave girl imitates the *basanos*, in which the necessary element of torture has its intended effect merely by the threat of it.<sup>47</sup> Eratosthenes' capture, resembling a trial with Euphiletus as prosecutor, is clearly intended to serve as a model for the current trial. And Eratosthenes' physical detainment and execution recall the procedure of *apagōgē* (as pointed out by Cohen 1991, 119–20).<sup>48</sup>

Other instances of reversal include the following. The slave girl's trips to the agora are the first step in arranging the affair (§8); the pretext of such a trip is the first step in ending it (§18). Euphiletus' wife accuses him of making a drunken, uncontrolled, unsuccessful "attempt" on the slave girl (§12); later, his mind unclouded, he successfully reestablishes his power over her (§§18-21). The story of lighting of a torch is at first a falsehood concocted to explain why the outer doors, as Eratosthenes left, had made a

---

common or at least recognizable. Euphiletus' audience could perhaps be relied upon to see the alteration of the living space itself as damning or dangerous deviation from social norms.

<sup>46</sup> Tellingly, Eratosthenes unexpectedly arrives after Sostratus departs.

<sup>47</sup> This is precisely how the *basanos* is used – as threat and rhetorical ploy – in Attic forensic oratory (Gagarin 1996): "in Lysias 1 [...] critics have often noted that Euphiletus presents no testimony from his wife's maid who conveyed messages to the adulterer Eratosthenes. Euphiletus does not need her testimony since he has free witnesses to support the main arguments in his case, but Eratosthenes' relatives, who apparently argued that he was entrapped, would surely have wanted to ask her about her role as an inter-mediator; and she might have been compelled to answer "yes" to a question like, "Did you or did you not bring a message to Eratosthenes that he should visit your mistress that night?" If the opponents did challenge Euphiletus to this βάσανος and he refused to hand over the woman (perhaps claiming she was free), they probably made much of this refusal in their own speech but he ignores it, concentrating instead on the points supporting his own side." (Gagarin 1996, 9)

<sup>48</sup> Bers (2009) proposes that an emotional speaking style was regarded as typical of tactless, unsophisticated forensic oratory. If this is so, then Euphiletus' equanimous disposition (as protagonist and speaker) from the second half of the *diēgēsis* through the end of the speech may bolster his newly public, legalistic persona by demonstrating his familiarity with the customs of litigation and public speaking.

noise (§14); later Euphiletus and his gang fetch actual torches on their way to capture Eratosthenes (§24). Even the distribution of lies and truths chiastically fits into a pattern of reversals. The ‘false’ torch of Euphiletus’ wife is the central element in a lie that conceals the affair; later the ‘true’ torches of Euphiletus and his gang literally shed light on it as it is brought to an end. In turn, a ‘true’ trip to the agora exposes the slave girl to Eratosthenes, enabling him to corrupt her and initiate the affair; the later ‘false’ trip to the agora – the lie by which Euphiletus leads her to his friend’s home – enables him to regain control over her and start the process of ending the affair.

The two evening-meal scenes (§§11-13 & §§22-26) mirror and invert one another in numerous ways that fit into this pattern of reversal as well. The first scene finds Euphiletus returning home unexpectedly while Eratosthenes is visiting (§11); in the second scene, Eratosthenes is the one who arrives unexpectedly (§23). Originally Euphiletus is locked in the upstairs bedroom, blithely unaware; Eratosthenes later finds himself in a similar position in the same room. The slave girl as lookout at first keeps Eratosthenes safe; later in the same role she seals his fate. Euphiletus is originally relieved and content to eat by himself; later he finds solitude so pitiable that he offers to share a meal with a friend who would otherwise eat alone.

Evening meal before the encounter	Evening meal after the encounter
Euphiletus unexpectedly returns	Eratosthenes unexpectedly visits
Euphiletus is locked inside the bedroom	Eratosthenes is locked inside the same room
Eratosthenes is safe, the affair concealed	Eratosthenes is trapped, the affair revealed
Euphiletus demonstrates weakness and unawareness	Euphiletus demonstrates strength and keen awareness

General patterns		
	Before §15	After
Slave-girl	She is loyal to and cooperates with Euphiletus’ wife and Eratosthenes.	She is loyal to and cooperates with Euphiletus.
Presence of Euphiletus’ wife in the narrative	She is frequently present.	She is mostly absent. Her presence is acknowledged once, and only so as to fix the location of Eratosthenes (i.e. beside her in bed) at the time of his capture.
Power of women	Euphiletus is dominated by his wife	Euphiletus dominates the slave-girl.
Role of Euphiletus	Passive, controlled	Assertive, controlling, marshals others
Mentality of Euphiletus	Naïve, trusting, emotional	Suspicious, guileful, unemotional

Who speaks?	Only women are directly quoted	Only men (and only Euphiletus) are directly quoted
Where is Euphiletus?	Only in the domestic sphere or returning to it	Almost exclusively in the civic sphere. When he is in a domestic space, he has support from other men on all but one occasion (namely the unexpected visit of Eratosthenes)
In the company of whom?	Exclusively women	Almost exclusively men
Use of domestic space	Conceals the adulterer and the affair	Traps the adulterer and lays bare the affair
Family and friends	Kinship network contracts, tied to emergence and persistence of adultery: <ul style="list-style-type: none"> <li>• Death of mother <ul style="list-style-type: none"> <li>◦ <i>aitia</i> of adultery</li> </ul> </li> <li>• Death of brother-in-law <ul style="list-style-type: none"> <li>◦ Occasion is connected to wife's infidelity</li> </ul> </li> </ul>	Social network expands, tied to stopping <i>moicheia</i> and apprehending <i>moichos</i> : <ul style="list-style-type: none"> <li>• Goes to home of friend <ul style="list-style-type: none"> <li>◦ Forces cooperation of slave-girl</li> </ul> </li> <li>• Invites friend to his own home</li> <li>• Later brings as many friends as he can find into his own home</li> </ul>
Utilization of citizen rights	Absent	Uses rights vis-à-vis law: <ul style="list-style-type: none"> <li>• <i>Basanos</i> used on slave girl, securing testimony</li> <li>• Summary arrest</li> <li>• Informal trial</li> <li>• Execution on behalf of the laws</li> </ul>

Specific events		
	Before §15	After
Visiting to the agora	Eratosthenes meets slave girl in the agora, wins her over, starts the affair	Trip to agora, with Euphiletus, is a ploy that becomes first step in ending affair, as it enables Euphiletus to force the slave-girl's to cooperate
Dinner	Eratosthenes is present and successfully concealed	Eratosthenes is present and captured
Euphiletus' actions toward and power over the slave girl	Wife claims that he 'made an attempt' sexually on the slave girl while drunk	Euphiletus, clearheaded, forces the slave girl to submit nonsexually
Returning from the fields	Euphiletus unexpectedly returns from the field. Eratosthenes is within. After sending wife away, he eats dinner by himself.	Sostratus returns from field. Euphiletus unexpectedly encounters him, offers dinner, knowing the former would otherwise eat by himself
Fetching of torch	The claim to have re-lit a torch is a fabrication that conceals Eratosthenes' visit.	The actual acquisition of torches accompanies exposure of affair.

The *prooimion*, as discussed above, elevates legal thought to the status of an organizing principle of civic and political order (See page 56) dependent on consensus among men. Consistent with this,

Euphiletus' isolation in the first half of the *diēgēsis* and his being surrounded by women in the *oikia* – their natural sphere of influence – are the natural concomitants of the weakness he demonstrates and the injury he suffers. So, too, because male community grounds the power of law, isolation from public life naturally gives rise to vulnerability to criminal mischief in private life; the death of Euphiletus' mother, the *aitia* (§6) of his woes, is so because it emblemizes familial dissolution as well as social isolation. There is, in other words, a strong connection between *moicheia* on the one hand and, on the other hand, weakening of the kin group, loss of control over the domestic space, absence from public life, and isolation from men.<sup>49</sup>

Athenian civic and political life demanded of the citizen that he have a public presence and engage with other men. The legal system demanded citizen engagement both inside the courtroom, as juror or litigant, and outside it, because, lacking a formal police force, the city relied on citizens to prosecute wrongdoing. Preservation of order and stability depended, notionally at least, on citizens' constantly observing one another. Euphiletus in the first half of the *diēgēsis*, having no access to public life, has no access to this kind of monitoring. He is unaware of what happens in his home because the man who has nobody to watch over him has no power to watch over himself. Of course, if monitoring by other men were so crucial to Euphiletus' own experience of adultery, one might expect the affair to be brought to his attention by a man, not the old woman. My point, however, is not that the speech meticulously reflects historical or cultural reality, or has perfect logical rigor. My point is that Euphiletus' experience with adultery teaches a lesson that likely would have rung true to a classical Athenian male audience: there is safety, for men against women, in numbers.

If the first half of the *diēgēsis* illustrates the pitfalls of absence from public life, the second half illustrates the strength enjoyed by men who participate in it. Just as adultery emerges in connection with

---

<sup>49</sup> The only mention of public space in the first half of the *diēgēsis* is in fact a reference to the slave-girl's trips to the agora, where she first meets Eratosthenes and takes the role of go-between. In turn, immediately after the encounter with the old woman, when Euphiletus accompanies the slave-girl outside the house on the pretext of a trip to the agora, his own foray into civic space is the first step in ending the affair.

Euphiletus' shrinking family circle, the halting of the affair unfolds through Euphiletus' growing social network:

- 1) His first move after meeting with the old woman is to remove himself and the slave-girl from the *oikia*, shifting the narrative's setting to the civic, male sphere
- 2) He leads her to the home of his friend, converting another man's *oikia* into a refuge and a source of male strength, in contrast to the *oikía* as a place of male weakness and female strength in the first half of the *diēgēsis*
- 3) He then invites another friend into his own home, converting his own *oikia* into a social space and refuge
- 4) And at the climax, he opens his home to as many friends and allies as he can muster.

This widening of Euphiletus' social horizons in the *diēgēsis* should call to mind the discussion of law at the opening of the speech, where successively larger groups of men are invoked to show the importance and value of consensus vis-à-vis crime and punishment. At each step in the resolution of the affair, with the exception of the old woman's appearance, both Euphiletus' social sphere and his power and agency in that sphere expand: first he leaves the home with the slave girl; second he goes to another man's home for shelter, where he forces the slave girl's cooperation; third he provides shelter to his friend Sostratus, who would otherwise have eaten alone; fourth he organizes collective action against a criminal. The climax of the narrative even coincides with the moment when the civic is at its most prominent and the private at its most circumscribed: when Euphiletus enters the bedroom backed by his gang, he converts the most private part of the *oikia* into a public space. In this way, the narrative arc of the affair completes the narrative arc of Euphiletus' personal transformation: when he first leaves the house, his civic self supplants his private self; when he returns with allies, the civic sphere supplants the private sphere.

Euphiletus' victory is typically understood as the recovery of control over the *oikos* via the reestablishment of the power of the husband and father. But at the conclusion of the *diēgēsis* there is in essence no longer any *oikia* or husband. This explains the otherwise perplexing absence of Euphiletus' wife from the second half of the *diēgēsis*: if the role of the husband or father were as central as Strauss



proposes, Euphiletus surely would have explained how he dealt with his unfaithful spouse. Euphiletus' later discussion of the lawgiver's thinking does tie the severity of the crime to its deleteriousness to the family unit (§33), but the *diēgēsis* concludes with a courtroom scene, a civic spectacle, in which the rights Euphiletus exercises are more connected to his status as citizen than to his status as husband. Nor does Euphiletus stress his role as father or husband at the moment Eratosthenes is killed. He in fact invokes no role for himself as an individual in 'sentencing' Eratosthenes. The claim that "not I but the laws of the city kill you" (§26) presents Euphiletus as a mere conduit for the city's will. In becoming a civic man, he sheds not just his private individual identity but his very identity and agency as an individual.

The role of direct speech in the *diēgēsis*, too, indicates that the role Euphiletus fashions for himself in the narrative is to be understood as that of citizen, not father or husband. In popular Athenian thought the *oikia* was the woman's natural sphere, where a woman's speech was allowed and where she was expected to wield some power. Thus the only direct speech in the first half of the *diēgēsis*, which takes place almost entirely inside the home, are women's words. But women enjoyed no right of speech in the public sphere, and were forbidden from addressing the assembly. In civic spaces the power of speech belonged to men. In the second half of the *diēgēsis*, therefore, only men speak – and of men only Euphiletus, their representative.

Not every reversal in the *diēgēsis* fits the thematic structure I have identified. The repetition of the torch motif seems devoid of any special significance. But every reversal in the *diēgēsis* performs the same essential, explanatory function: it shows Euphiletus systematically correcting in the second half of the narrative what went wrong in its first half that led to the affair and obstructed its detection. The arc of the narrative thus reverses the arc of the *prooimion*: the *prooimion* shows Euphiletus to be isolated, his relationship to the jury uncertain; the narrative earns him a place among them.

### **Transforming Euphiletus as narrator, protagonist and defendant**

One of the goals of this chapter, as stated at the outset, is to resolve the problem posed Euphiletus' two contradictory roles: his two personae – fool and authority – are equally indispensable to

the speech, but each undermines the other; how does Lysias reconcile them? The answer is that he does not. Rather, he structures the narrative in such a way as to make the man who brings the affair on himself incommensurable with the man who stops it. Euphiletus does not possess contrary qualities; he becomes a different man. In a way this only deepens the rhetorical problem. Why should the jury accept that a naïve cuckolded victim has somehow become a civic hero and an authority on the law? How does Lysias make that transformation credible? And does it actually resolve the problem of the two roles' undermining one another? The answers to these questions are found in the details of Euphiletus' transformation.

The reversals described above illustrate the effects of Euphiletus' transformation, but they are not the transformation itself. There are in fact two moments of transformation, one at §6 and another at §17. As noted, Euphiletus in the first half of the *diēgēsis* is more or less the character described by Carey and others, but it would be truer to say that the protagonist of the first half of the *diēgēsis* is more or less the same character as the speaking voice of the *prooimion*. The naïve, simple man (§§6-14) complements and grows out of the humiliated, helpless victim (§§4-6). That is, the persona of the speaker in the opening chapters becomes the persona of the protagonist of the narrative. This is in a way unsurprising. Why should Euphiletus paint one picture of himself in the *prooimion* only to undermine it when he starts the *diēgēsis*? As noted earlier, though, self-abusive asides in the first half of the narrative indicate precisely that Euphiletus the *narrator* is different from his protagonist in the *diēgēsis*. The narrator's knowing, contemptuous attitude distances him from his past self, implying that he, unlike that man whose woes and errors he recounts, would grasp the significance of his wife's late-night return and would not be such a fool as to regard her the city's finest spouse (§7). He would be more on his guard – much as the juror would be. Like the juror, Euphiletus as narrator regards the victim from a position of safety and superiority. The speaking voice of the narrator in the first half of the *diēgēsis* therefore is not the same as the speaking voice of the opening chapters: the speaking voice of §§4-6 is that of the victim who reappears in §§6-14 as protagonist; the speaking voice in the first half of the *diēgēsis*, in expressing

contempt towards the protagonist, distances himself from the protagonist's status of victim.<sup>50</sup> The speaker at §6 thus undergoes a transformation: the role of the victim, which the speaker assumes in the *prooimion*, is externalized and relegated to the past.

The reason why the jury likely accepts this change, and fails to see that the narrator is now distinct and different from his protagonist, is that the narrator's knowing perspective is essentially the same as the perspective of any autobiographical narrator: when the autobiographical narrator engages in retrospection, he necessarily does so from a privileged position, knowing more than his past self. In flaunting his superior knowledge at the expense of his past self,<sup>51</sup> the narrator merely makes that relationship more explicit. But the relationship need not be as antagonistic as it is in the first half of the *diēgēsis*. The attitude of disdain evident in the first half of the *diēgēsis* sharpens the natural split between the more knowledgeable, narrating Euphiletus and the less knowledgeable protagonist, highlighting the extent to which the one differs from the other. The first transformation of Euphiletus, at §6, changes the audience's understanding of Euphiletus as speaker: when Euphiletus begins his narrative, he creates in his protagonist a second self that absorbs the speaker's victim status (the status he developed in the *prooimion*). The second transformation, at §17, unfolds in exactly the same way:

ἐγὼ δ' εὐθέως ἐταραττόμην, καὶ πάντα μου εἰς τὴν γνώμην εἰσήει, καὶ μεστὸς ἦν ὑποψίας,  
ἐνθυμούμενος μὲν ὡς ἀπεκλήσθην ἐν τῷ δωματίῳ, ἀναμνησκόμενος δὲ ὅτι ἐν ἐκείνῃ τῇ νυκτὶ  
ἐψόφει ἡ μέταυλος θύρα καὶ ἡ αὐλειος, ὃ οὐδέποτε ἐγένετο, ἔδοξέ τέ μοι ἡ γυνὴ ἐψιμυθιωῖσθαι.  
ταῦτά μου πάντα εἰς τὴν γνώμην εἰσήει, καὶ μεστὸς ἦν ὑποψίας.

Straightaway I was thrown into confusion, and everything started flooding into my mind, and I was filled with suspicion as I recalled how I'd been locked up in my room, and as I remembered how, on the night in question, the gate and the front door had made a noise – which had never happened before – and how my wife had seemed to be all gussied up. All of it was flooding into my mind, and I was filled with suspicion.

<sup>50</sup> As discussed above, the final two chapters of the *prooimion* present Euphiletus as a helpless victim, but there is no indication that he actually invited his own victimization or is to blame for it; thus, prior to §6, *moicheia* is essentially what Eratosthenes does to Euphiletus (ἐμοίχευεν Ἐρατοσθένης τὴν γυναῖκα τὴν ἐμὴν, §4). At the start of the *diēgēsis*, though, when externalization of the role of the victim creates the persona of the narrator, Euphiletus distances himself as narrator from his prior victimhood. This enables him, in sympathy with the jury, to judge it scornfully; this is why, after §6, with the victim externalized and inferior to the speaking voice, *moicheia* is not something Eratosthenes does to Euphiletus but rather something Euphiletus, the protagonist, brings on himself.

<sup>51</sup> E.g., οὕτως ἡλιθίως διεκείμην, ὥστε ὥμην τὴν ἐμαυτοῦ γυναῖκα πασῶν σωφρονεστάτην εἶναι τῶν ἐν τῇ πόλει. (§10-11)

The protagonist engages in autobiographical retrospection, creating yet another Euphiletus, another protagonist. The narrator again looks back on the protagonist's actions and sees error; recognition of error again distances the narrator from the protagonist. The attitude of the narrator at §17 towards his protagonist is not contemptuous, as it is in §§6-14, but recognition of error nevertheless demonstrates the narrator's superior knowledge. The first transformation at §6 brought the narrator of the *diēgēsis* into a kind of sympathy with the jury, showing him to be immune to victimization, much as the jury is presumably immune to it, but created disharmony between Euphiletus the narrator and Euphiletus the protagonist. The second transformation brings them back into harmony: when the protagonist of §§6-14 becomes narrator, both the narrator of the *diēgēsis* and his protagonist become superior to their past selves – becoming shrewd, observant and safe.<sup>52</sup> It will be helpful to set out the structure of Euphiletus' transformation somewhat more visually:

- 1) Prior to the *diēgēsis*, there is a single Euphiletus.
  - a. His voice is simply that of defendant.
  - b. And as defendant he is a helpless, dubious figure.
  - c. He suffered at the hands of the adulterer and grovels before the jury.
- 2) At §6, another Euphiletus is created; this is the protagonist.
  - a. Disharmony results:
    - i. The protagonist maintains the voice of the victim, carried over from the *prooimion*.

---

<sup>52</sup> As discussed in the previous section, the protagonist Euphiletus, after his transformation, is not just safe; he is a fully participating citizen, and this is evidenced partly by his utilization of legal procedure, e.g. the *basanos* of the slave girl, *apagōgē* in the arrest of Eratosthenes, and the impromptu trial held in Euphiletus' home. The protagonist earns his place among the jurors via his truck with the law. Here again the second transformation is seen to be very similar to the first: the first creates a perspectival affinity between the jury and the narrator of the *diēgēsis*, as both are seen to be safe from harm; the second transformation creates a more legalistic affinity, as Euphiletus demonstrates himself to be a participating member of the juror's social juridical community via his competence as a friend and legal actor.

- ii. The narrator takes a different voice, one more self-confident and commanding, a perspective that he shares with the jury.
  - b. Thus the first half of the *diēgēsis*, in relegating the victim to the past, expunges the victim from the voice of Euphiletus as speaker and narrator.
- 3) In §15-6 Euphiletus the narrator and Euphiletus the protagonist are brought back into harmony.
- a. The protagonist initiates another autobiographical narrative – a second autobiographical narrative within the first – when he looks back on the past.
  - b. This results in the creation of a second protagonist.
    - i. Like the first protagonist, the second assumes the status of victim.
    - ii. And like the first narrator, the new narrator calls attention to that man's errors.
      - 1. The narrator thereby shows himself to be devoid of the flaws that led to those errors.
    - iii. The protagonist of the first autobiographical narrative (§§6-14) ceases to be a victim, and becomes more confident and commanding.
- 4) The role of the victim is thus no longer present either the past (the first protagonist) or the present (the first narrator Euphiletus)
- a. At §17, then, the persona of the victim is no longer not present in Euphiletus the narrator or the protagonist of the first autobiographical narrative
  - b. When Euphiletus ends the narrative and begins to offer arguments, he necessarily maintains the voice of his commanding, confident self; no other voice remains
- 5) Thus Euphiletus' transformations in the narrative effect a transformation in his persona as defendant:
- a. As litigant he is no longer the helpless victim he was at the speech's outset

- b. Having learned and changed, he can begin to speak authoritatively about murder, rape, adultery and the law

In short, Euphiletus' transformation – his division into two disharmonious halves, and his reintegration and re-harmonization – transforms his speaking voice as defendant, so that he sheds the status of victim and can assume that of peer to the juror and champion of the laws.

In following this trajectory, the first twenty-eight chapters of the speech illustrate one of the Lysianic hallmarks, namely the cultivation of venial flaws: at the opening of a speech, Lysias' speakers often adopt a posture that accommodate the juror ill-disposed to the speaker by accepting or inviting blame. As the speech unfolds, the speaker progressively erodes that hostility. In the case of Lysias 1, the hostile juror is the one who looks down on Euphiletus for his humiliation at the hands of the adulterer and for his role in the killing of an Athenian citizen. Opening the speech in a commanding tone – i.e. in the tone Euphiletus begins to adopt after the encounter with the old woman – would have alienated that juror. Thus the *prooimion* presents Euphiletus in a posture that accepts and even solicits the juror's disapproval: he shows an acute awareness of the precariousness of his position and of the weakness that distinguishes him from his listener. The first half of the narrative attempts to win over the juror by mirroring his presumed disapproval: the *diēgēsis* fixes the juror's attention on Euphiletus' foolishness in being cuckolded (helpfully drawing the juror's mind away from the disapproval he might feel towards the killing of Eratosthenes). Self-abusive asides from the narrator encourage the juror's hostile attitude, but it simultaneously enable Euphiletus to attach himself sympathetically to that hostility, freeing him from it by displacing it onto another version of himself. The juror accepts Euphiletus' hostility towards himself because it mirrors the juror's own. After the encounter with the old woman, Euphiletus the protagonist takes the juror's perspective. When that happens, Euphiletus – as protagonist and speaker – is thoroughly in sympathy with the presumed mentality of the juror. The speechwriter's hope, it seems to me, is that Euphiletus' sympathy with the juror's disapproval will induce the juror to feel a more positive sympathy toward Euphiletus: the juror will cheer the domination of women and the outwitting of the seducer.

Euphiletus attaches himself to other men not just spatially, by leaving the house, but psychologically, by reshaping himself in the image of the men listening to his story.

But adultery is not the central issue of the suit, and the unconvinced juror's disapproval of the murder is a more complicated rhetorical problem than his disapproval of Euphiletus for losing control of his household. Lysias solves the more complicated problem by framing it in terms of the less complicated one: the characterological changes in Euphiletus that release him from blame for the affair are precisely the changes that make him heroic as Eratosthenes' killer; in freeing himself from disdain for his incompetence as a husband, Euphiletus acquires civic credibility – a civic-mindedness and juridical competence – and it is on the basis of this credibility that he attempts to justify the murder (“not I but the laws will kill you”). As discussed above, out of Lysias' various speakers, Euphiletus is arguably the most unlikely candidate for sympathy and the least deserving of it. Just how urgent a problem this poses for Euphiletus should now be clear: the thread that ties together the first 28 chapters of the speech is the reshaping of the jury's feelings toward Euphiletus, rendering him a more credible, sympathetic figure. Only with this process complete – after the *diēgēsis* – does Lysias allow his client, finally, to speak openly about the murder and defend it.

### **Picking up where the *prooimion* left off: legal principles in the *prooimion* and their reuse in *lysis* and *pisteis***

One might be inclined to regard Euphiletus' civic, legalistic refashioning of himself as fulfillment of the earlier promise that he would “show that [...] I did these things for the sake of nothing else than vengeance according to the laws” (§5). At the end of the *diēgēsis* the protagonist Euphiletus does indeed take a step in that direction when he reminds Eratosthenes on first addressing him that his actions are a personal affront to Euphiletus and his family and home: “I brought his hands behind his back and bound them, and was asking him why he is committing *hybris* against my *oikia* by entering it” (καὶ τὸ χεῖρε περιπαγὼν εἰς τοῦπισθεν καὶ δήσας ἡρώτων διὰ τί ὑβρίζει εἰς τὴν οἰκίαν τὴν ἐμὴν εἰσιών, §25). But the

final address to Eratosthenes veers away from the topic of personal vengeance, recharacterizing *moicheia* and the murder much as Euphiletus has recharacterized himself, adding a certain civic-mindedness:

οὐκ ἐγὼ σε ἀποκτενῶ, ἀλλ' ὁ τῆς πόλεως νόμος, ὃν σὺ παραβαίνων περὶ ἐλάττονος τῶν ἡδονῶν ἐποιήσω, καὶ μᾶλλον εἴλου τοιοῦτον ἁμάρτημα ἐξαμαρτάνειν εἰς τὴν γυναῖκα τὴν ἐμὴν καὶ εἰς τοὺς παῖδας τοὺς ἐμούς ἢ τοῖς νόμοις πείθεσθαι καὶ κόσμιος εἶναι. (§26)

It is not I who will be your killer but rather the law of the city; you have broken that law, and have made it less important than your personal pleasure; and you have preferred to commit this crime against my wife and my children rather than to behave as a responsible citizen and to obey the laws.

Note that every clause is organized around the distinction between the private and the civic, with the latter dominant, normative and authoritative: Euphiletus vs. law; law vs. private pleasure; criminal action against an individual vs. responsible citizen conduct. The jury presumably would understand that Eratosthenes was not killed literally by the laws themselves, and so might forgive Euphiletus his grandiosity, but there is good reason for rejecting this justification of Eratosthenes' killing at §26: it cannot be squared with his justification of it at the end of the *prooimion*, for precisely the same reason as it is impossible to square the victimized Euphiletus with the heroic Euphiletus. In the *prooimion*, at §5, homicide was the action that Euphiletus, as victimized individual, performed for his own reasons on his own behalf.<sup>53</sup> Now, at §26 it is not his action, not carried out for reasons he determines, not on his own behalf, and no longer profits him. The killing of Eratosthenes is no longer the vengeance that law grants to the victim of adultery. Victim and vengeance are absent. The killing, as punishment for adultery, is simply the law of the city.

The addition of this civic element to the killing may at first seem an obvious, conventional, even bland rhetorical ploy, in that Euphiletus seems to elaborate a simple comparison (one man broke the law whereas the other obeyed it) within a needlessly elaborate conceptual structure so as to make that much starker the difference separating his victim's foulness from his own uprightness. But when Euphiletus' final address to Eratosthenes is examined alongside the *prooimion*, a host of continuities and discontinuities become apparent; it becomes clear that the unnecessary elements added to the comparison

---

<sup>53</sup> οὔτε ἄλλους κέρδους οὐδενὸς πλὴν τῆς κατὰ τοὺς νόμους τιμωρίας, §4-5



draw upon ideas that the speaker has been developing since the speech's opening words. When Euphiletus discusses his and Eratosthenes' actions at §§4-5, he draws no comparison, nor is there any reference to the relative civic value of their actions. From this vantage point, his intensely comparative final address to Eratosthenes strikingly diverges from his earlier discussion of the crime. And yet at the same time his final address reaffirms the civic, universalizing formulation of law that presented in §§1-3: there Euphiletus treats law as the organizing principle of the social and political spheres, unifying all men and excluding the criminal. At the end of the *diēgēsis*, Euphiletus' newly acquired civic role has granted him a place in that unity. Having joined the city, he is now among those who agree on the severity of the crime and recognize the necessity of a severe punishment. As a result – because he is a part of that unity – his perspective is no longer distinct from that of the jury or the city, and his transactions with the law and legal procedure are no longer those of a private individual (hence the claim that “the laws, not I” will be Eratosthenes' killer, rather than the claim that “I did this for no other profit than that of vengeance”). When Euphiletus joins the city and earns the right to pass legal judgments, he thus affirms the model of law that he presented at the opening of the speech. Indeed, the exclusions that applied to the universalizing formulation of law at §§1-3 still apply at the end of the *diēgēsis*: at §§1-3 the criminal is excluded because his existence impinges on the well-being of the community; at the end of the *diēgēsis* the speaker has shown that he belongs among the jurors and that the criminal must still be excluded (i.e. killed).

At §§4-5 the discussion of Eratosthenes and Euphiletus' actions lacks the comparative structure that we find at §26 in the final address to Eratosthenes, but there is a strong comparative focus in §§1-3: Euphiletus' point there is precisely that one crime is worse than all the rest. This comparison of crimes obviously differs in numerous ways from the comparison, at §26, of Euphiletus' lawful actions to the unlawful actions of Eratosthenes, but once more the early passage is, I would argue, closely connected to the later passage; and the one differs from the other precisely as the earlier Euphiletus differs from the later: the early comparison concerns wrongdoing, victimhood and vengeance; the later comparison concerns the champion, his civic role, and punishment of the criminal. In other words, the *prooimion*'s

indictment of crime is at §26 essentially rewritten as praise of civic heroism.<sup>54</sup> The addition of the civic element in Euphiletus' final address to Eratosthenes is therefore not a bland recycling of a topos common to classical Athenian oratory. It is the fulfillment of the vision he set out at the opening of his speech and that he pursued over the course of the *diēgēsis*. The surviving classical forensic speeches do routinely cast their speakers' suits in terms of citizenship and civic conduct, as indeed they should given the civic and political dimension of litigation described above. In that sense, the addition of a civic dimension is conventional. For wealthy litigants this often meant demanding credit for the excellence of their past services to the city, e.g. virtuous ancestors, extravagant liturgies or courageous conduct in war. And (Porter 2007 [1997], 75) rightly points out that Lysias 1 is unusual in that its speaker fails to make any such claims. But the discourse of civic self-praise is indeed present in the speech, albeit in an idiosyncratic form. Whereas in most speeches it is a mere aside or footnote to the central line of argument, it is in Lysias 1 the crux of the defense: other Lysianic speakers recall past services to the city so as to win the jury's support on a separate matter; in Lysias 1, the murder of Eratosthenes is the very thing for which the city ought to be grateful.<sup>55</sup>

## Law and Argument

The final address to Eratosthenes at §26 treats the justness of the murder as a matter settled, and a certain arc has, at that point in the speech, certainly come to a close: the issues raised in the *prooimion* – crime, punishment and community – have been reworked, paralleling Euphiletus' own self-reworking. Conceptually and characterologically, what was private has become civic, with the result that a questionable deed (murder) has become praiseworthy. But the central matter of the suit itself is not settled. In subtly redirecting the juror's attention to legal principles, Euphiletus signals that he is about to

---

<sup>54</sup> In other words, the earlier comparison, like the later, is a comparison of homicide and adultery. The point of both comparisons is to show that *moicheia* is worse than homicide, but whereas at the end of the speech homicide is a lawful punishment, it is, implicitly, in the opening chapters of the speech a crime. I will return shortly to this issue.

<sup>55</sup> ἐγὼ μὲν οὖν, ὧ ἄνδρες, οὐκ ἰδίαν ὑπὲρ ἑμαυτοῦ νομίζω ταύτην γενέσθαι τὴν τιμωρίαν, ἀλλ' ὑπὲρ τῆς πόλεως ἀπάσης (§47)

settle them by arguing for the murder's legal justification: he has already offered an implicit defense of the murder through narrative and its thematic subtext; if the narrative has had the desired impact on the audience, the juror will now be more receptive to the argument that the killing has legal justification.

The legal principles which Euphiletus discusses are in fact the very ones that he discusses at the opening of the speech: which crime is worse (or worst), what punishment is deserved, and how punishment relates to crime. This section of my study of Lysias 1 examines, in part, how Euphiletus answers those questions. His answers, though, are part of a larger discourse on the law, and my focus will be that discourse. I examine three passages: §29, where the jury is told that they commanded the adulterer's execution and cannot now change their minds; §30-33, where Euphiletus explains the reasoning of the lawgiver; §34-6, where Euphiletus warns the jury that a judgment against him would have dire consequences. I will show that, over the course of these passages, law moves out of the courtroom, out of the hands of the jury, and into the hands of the individual. The civic formulation of law that the speaker sets out in §1-3 will still be valid at the speech's end, but the jury will no longer be involved in it. If in §1-27 Euphiletus earns a place in the jury's community, in §29-36 he casts them out.

Certain elements of that changing dynamic are implicit in the final scene of the *diēgēsis*. In the *prooimion*, the jury is seen to ground the authority of the legal system on behalf of the individual. At the end of the *diēgēsis*, the individual does so on his own behalf via the laws, somewhat circumscribing the jury's powers: originally they spoke for and judged the man whose interests they protected; now he, representing the laws, does this for them. Nor does the final scene of the *diēgēsis* encourage the juror to believe that his role is to reason about the law. Personified ("not I but the laws"), with its own will and authority, law now reaches its own verdicts, which it pronounces as commands. Law thus wields an authority superior to the juror's, further circumscribing the jury's role: their rightful task is not even to render judgment; it is to stand aside and allow law to take its course. The role of the individual in relation to law has changed as well. The authority of law was originally vested in the jury, its legitimacy drawing from their consensus. But at §26 law's legitimacy and efficacy, no longer dependent on the jury, rely on

the intercession of a representative, namely Euphiletus. The representative is thereby imbued with the authority of law itself, an authority that supersedes the collective authority of the jury.

These changes in Euphiletus' handling of law, jury and individual are merely implicit in the final address to Eratosthenes at §26. The address to the jury at §29 makes them more explicit:

ἐγὼ δὲ τῷ μὲν ἐκείνου τιμήματι οὐ συνεχώρουν, τὸν δὲ τῆς πόλεως νόμον ἡξίουν εἶναι  
κυριώτερον, καὶ ταύτην ἔλαβον τὴν δίκην, ἣν ὑμεῖς δικαιοτάτην εἶναι ἡγησάμενοι τοῖς τὰ τοιαῦτα  
ἐπιτηδεύουσιν ἐτάξατε. Καί μοι ἀνάβητε τούτων μάρτυρες.

But I didn't accept his offer, but instead thought the law should have more authority. And I exacted the penalty that you yourselves have established [or even 'ordered'] for those engaged in these sorts of practices, thinking it the most just.

Here the jury is in some ways in the position of Euphiletus' gang at the end of the *diēgēsis*, exhorted to give their approval to his actions and to the law. Those actions, which in the *diēgēsis* were the will of law itself, are once more the will of the jury. But the reminder that the authority of law lies with them has a paradoxical effect. In contrast to the *prooimion*, where the juror freely decides the law and its justness, the juror §29 is the captive of his own legal reasoning, his judgment predetermined. Thus even as Euphiletus reminds jurors of their power as jurors to reach legal decisions, he simultaneously deprives them of the right to exercise that power.

The end of the *diēgēsis* shows that the jury as a group has no right to act on behalf of law; that right now lies with the individual, its representative. Euphiletus' warning to the jury that they may not change their minds shows that they also have no right to reason on behalf law either; that right, too, lies with the individual – not with Euphiletus but with the lawgiver (§30-33). The topos of the lawgiver has particular point in its context in Lysias 1: as the embodiment of legal authority, the lawgiver is proof that the wisdom and authority of the individual can exceed that of the group – precisely the principle Euphiletus is in the process of establishing. In order to prove to the jury that his decision to take Eratosthenes' life was sound, he now goes on to argue that the individual has the right to make legal judgments and act on them. Naturally, then, it is in discussing the lawgiver that Euphiletus finally addresses the legal issues raised in the first three chapters. Harris (1990) provides the most recent and authoritative discussion of this section of the speech, and so my discussion begins with a response to him.

Before Harris, it was widely accepted that Athenians regarded, and that Athenian law punished, seduction as a more serious crime than rape. Against this view Harris shows that Euphiletus, in §§30-33, is guilty of four gross distortions of the laws he cites:

- 1) *That the law punishes moicheia with death* (§29-30). The law Euphiletus cites is almost certainly the law on justifiable homicide, which lists circumstances under which homicide is not liable to prosecution (one of these being the circumstances of Eratosthenes' capture). Neither is it a law on adultery nor does it specify penalties. It merely protects killers from prosecution under certain conditions.
- 2) *That the lawgiver made death the penalty for the moichos but not the rapist* (§31). Euphiletus suppresses that the law on justifiable homicide grants to the killer of a rapist caught in the act the same exemption as it grants to the killer of a *moichos* caught in the act.
- 3) *That the lawgiver ordained death and only death as the punishment for moicheia*. Payment of damages was an accepted alternative. There is wide agreement that this will have been the usual practice.
- 4) *That payment of damages is the only settlement available in instances of rape*. Rape could be prosecuted as a *graphē hybreōs*, making it punishable by death if the prosecutor sought that penalty.

Harris concludes that Euphiletus' distortions have

methodological implications for the study of Athenian social history. Although scholars have long recognized that the Attic orators are often unreliable sources for contemporary events, they have generally trusted their statements as evidence for popular morality. Yet here too caution is required. Euphiletus' presentation of the Athenian statutes regarding rape and seduction is dictated by the rhetorical constraints of his case. It is not a reflection of widely held attitudes. (Harris 1990, 375)

But if past scholars deserve criticism for their uncritical handling of the orators as a source for study of popular morality, Harris deserves some criticism for equally uncritical handling of Athenian law as a source for study of the same: prior to the quotation above, distortions of law are the sole topic of Harris' article. There has been no discussion of popular morality. Surely the two are connected, but they are not one and the same; to distort one is not necessarily to distort the other. Moreover, Harris begs the question when he adverts to the "rhetorical constraints" that apparently offer a better account of Euphiletus' reasoning, since it is hardly clear that the "rhetorical constraints" to which he refers are independent of, or

even distinguishable from, the constraints imposed by popular morality. Nor is it clear that Harris himself believes them to be separate:

One final question remains: why did Lysias think that Euphiletus could get away with this specious argument? [...] the men who decided the case may have found his argument compelling. [...] From their point of view, Euphiletus had a point of sorts: the μοιχός did in a way pose a greater threat to their authority in the household and thereby to their honour than did the rapist. While the rapist exercised power over a woman's body for just a short time, the μοιχός could win a long-lasting master over her soul. To the men who heard Euphiletus' case, this argument may have been quite seductive. (ibid.)<sup>56</sup>

If sexism accounts for the juror's willingness to accept that adultery is worse than rape, then that juror believes adultery to be worse than rape. The belief may not be actively, consciously held, and may not be written into the laws, but if the juror's values guide him to accept it, then the argument does appeal to "widely held attitudes."

Harris' article is commanding on matters of law,<sup>57</sup> but its discussion of rhetoric requires modification. In particular, Harris never notes how strange it is that Euphiletus actually goes to the

---

<sup>56</sup> Harris is making the same arguments that Euphiletus makes in regard to the thinking of the lawgiver. In other words, Harris believes he is explaining why Lysias may have thought he could get away with it, but he is in fact summarizing what Lysias wants get away with.

<sup>57</sup> There has been some debate over whether *moichoi* were classed as *kakourgoi* and thus were subject to *apagōgē* by the Eleven, leading to summary execution in the event of a confession. Most recently Carey (1995) has argued that *moichoi* were not *kakourgoi*. For those who have argued to the contrary, the relevant passage – and "the only passage which can plausibly be cited in support of this view" (Carey 1995, 411) – is Aeschines 1.90f.:

καὶ δέδεικται φανερά ὁδός, δι' ἧς οἱ τὰ μέγιστα κακουργοῦντες ἀποφεύζονται. τίς γὰρ ἢ τῶν λωποδυτῶν ἢ τῶν κλεπτῶν ἢ τῶν μοιχῶν ἢ τῶν ἀνδροφόνων ἢ τῶν τὰ μέγιστα μὲν ἀδικούντων, λάθρα δὲ τοῦτο πραττόντων, δώσει δίκην; καὶ γὰρ τούτων οἱ μὲν ἐπ' αὐτοφώρῳ ἄλόντες, ἐὰν ὁμολογῶσι, παραχρῆμα θανάτῳ ζημιοῦνται, οἱ δὲ λαθόντες καὶ ἔξαρνοι γενόμενοι κρίνονται ἐν τοῖς δικαστηρίοις, εὐρίσκεται δὲ ἡ ἀλήθεια ἐκ τῶν εἰκότων.

And a clear way has been offered by which those who commit the worst wrongs shall escape punishment. For what muggers or thieves or *moichoi* or killers or any other of those who commit the worst wrongs but do so in secret will be punished? For of these, those caught in the act are punished with death immediately if they confess, but those who escape notice and deny guilt are judged in court, and the truth is discovered from probability.

Given that Athenian statutes rarely defines their terms, and given that legal terminology generally receives definition in practice, I am inclined to think that the list of *kakourgoi* was defined only when it was applied. That is, we should look to cases, not laws, for its definition. Moreover, the content of the law and the accuracy of Aeschines' representation of it – if in fact he is representing it, which Carey rejects (1995, 411) – are separate from the matters that concern me, namely the rhetorical use of the law. For my purposes, Aeschines 1 and Lysias 1 are enlightening and useful indeed; for they show two speechwriters treating as plausible that *moichoi* could be legally defined as *kakourgoi*. Carey's view, moreover, fails to take the rhetorical context of the speech into account: he argues that the

trouble of discussing rape, rape vs. adultery, the laws governing them, and their respective punishments. Strictly speaking, all of these issues are irrelevant. Euphiletus mentions rape nowhere else in the speech, neither before §29 nor after §33 – nor should he, as it is not the crime at issue. Moreover, Euphiletus’ account of the lawgiver’s thinking on rape actually does not clarify his thinking on adultery: the one makes equally good (or bad) sense without the comparative evidence of the other. Of course, there is a fairly obvious reason why Euphiletus might wish to draw these distinctions: doing so serves his interests by presenting adultery in as negative a light as possible, so that it merits the greatest possible punishment. And yet he could have established the same point more simply in any number of ways. Here, as in his final words to Eratosthenes, additional elements unnecessarily complicate a simple idea. And here, too, just as in the final address to Eratosthenes, the additional elements obey an underlying logic, tightly organized around a few themes.

One is the relative severity of violence and non-violence vis-à-vis crime and punishment. Honest comparison of the laws on rape (violent sex crime) to the laws on adultery (non-violent sex crime) would have revealed them to be “equal” crimes, in the sense that the law permits the prosecutor to pursue essentially the same penalties. Through selective emphasis, Euphiletus argues instead that, in the realm of sexual crime, non-violence is worse than violence. In turn, honest comparison of monetary damages (non-violent penalty) and capital punishment (violent penalty) would have revealed if not equivalence than at least interchangeability in cases of rape and adultery: both are accepted punishments for both crimes. Selective emphasis, again, enables Euphiletus to argue otherwise. Whereas non-violent sexual

---

speaker at §28 cannot be quoting that law because that law would not offer the evidence that the speaker seems to expect – that is, Euphiletus cannot be quoting the law, because the law does not include *moichoi* among *kakourgoi*. But if Euphiletus can misrepresent, immediately after quoting it, the law on justifiable homicide, there is no obvious reason why his discussion of the law on *kakourgōn apagōgē* be any more accurate. That the speaker is quoting the law on *apagōgē* makes more sense in context than Carey’s proposal: the speaker’s formal, official posture in the second half of the narrative would then be clearly to attempt to represent himself as essentially a public official, one of the Eleven; when he confronts his victim he may therefore speak on behalf of the laws and pass summary judgment, just as the Eleven would under the law on *apagōgē* (οὐκ ἐγὼ σε ἀποκτενῶ, ἀλλ’ ὁ τῆς πόλεως νόμος, §26). The speaker’s discussion of the law quoted (but lost) at §28 has so many parallels with elements of the law on *kakourgōn apagōgē* that it strikes me as far-fetched that it could refer to any other law.

crimes are presented as more severe than violent sexual crimes, though, violent punishment is shown to be more severe than non-violent punishment. If the more severe crime merits a more serious punishment, then surely Eratosthenes, the non-violent criminal, met a justly violent end. Euphiletus goes still further, arguing that death is inadequate punishment for adultery, as demonstrated by the fact that the *moichos* who corrupts a *pallakē*, too, is (apparently) punished with death:

καίτοι δῆλον ὅτι, εἴ τινα εἶχε ταύτης μείζω τιμωρίαν, ἐπὶ ταῖς γαμεταῖς ἐποίησεν ἄν. νῦν δὲ οὐχ οἷός τε ὦν ταύτης ἰσχυροτέραν ἐπ' ἐκείναις ἐξευρεῖν, τὴν αὐτὴν καὶ ἐπὶ ταῖς παλλακαῖς ἠξίωσε γίνεσθαι. (§31)

Obviously if [the lawgiver] had some stronger form of retribution than death [for *moicheia*], he would have imposed it in the case of married women, but since he couldn't find one more severe than [death], he thought it right that the same penalty apply to *pallakai* as well.

This idea – that the punishment is not only just but inadequate – evokes the *prooimion*: there, too, the punishment treated as minor compared to the heinousness of the worst of all possible crimes. The argument concerning the *pallakē* vs. the wife is, as with the arguments concerning rape and rape vs. adultery, irrelevant. But it serves Euphiletus' purposes by enabling him to portray Eratosthenes' crime in the worst possible light.

We have seen that early in the speech Euphiletus draws a comparison between crimes, stressing their relative severity and the idea that the one that stands above all others as obviously the worst. We have seen, too, that this comparison is reworked at the end of the *diēgēsis*, where the killing of Eratosthenes is presented as a civic duty – adding elements and removing others so as to capitalize on developments in Euphiletus' character. A similar connection can be drawn between the *prooimion*'s discussion of the “worst” crime and the later discussion of rape and adultery. The former, like the latter, is centrally concerned with the comparison of Euphiletus' actions to those of Eratosthenes, which is to say that the earlier comparison juxtaposes the crime of *moicheia* with the *crime* of homicide (i.e. not the killing as legal punishment but homicide as the crime being tried). This in fact follows from my analysis of the *prooimion*, in which I suggested that Euphiletus' emphasis on “this one crime” which is “worst of all” would baffle the juror who has any knowledge of the background of the suit: that juror will know that Euphiletus' is not prosecuting himself, because Euphiletus will plead justifiable homicide on the grounds



that he caught his wife's seducer in the act. The juror knows that the current suit concerns not one crime but two; by emphasizing the incontrovertible foulness of "that one hybris" he invokes precisely the idea that homicide is not the worse of the two crimes. In order to reach a judgment, the juror must decide, first, whether Euphiletus' claim vis-à-vis the affair and apprehension of the *moichos* is factually true, and, two, if it is true, whether Euphiletus acted appropriately. That is, the juror's verdict hinges on whether he believes murder the appropriate punishment for adultery. If the magnitude of the crime is outweighed by the magnitude of the penalty, then the killing was unjust, regardless of the law; and if the killing was unjust, then Euphiletus, in rejecting the established practice of accepting compensation, acted unacceptably. In order to secure his exoneration, Euphiletus must convince the juror not just that the crime was appropriately punished, but that Eratosthenes' *moicheia* is as grave as if not worse than its punishment. This is the point that he is harping on in the opening three chapters: not that adultery is the worst of all crimes, but that it is worse than his own crime. The fact that Euphiletus never directly makes the comparison of *moicheia* as a crime to homicide as a crime shows that Lysias saw danger in even admitting that the killing could be understood as a crime: the instant Euphiletus allows the juror to entertain the possibility, the danger arises that the juror will accept it as true. The excessively complicated discussion of rape and *moicheia* makes the necessary point – that adultery is worse than killing – without making it openly or tendentiously: by adding unnecessary elements to his discussion, like rape and the comparison of punishments, and by distorting the laws, Euphiletus shows that the non-violence would have been worse than violence as a way of punishing Eratosthenes's crime; this is because the non-violent sexual crime was in fact worse than the violence with which Euphiletus responded. The crucial comparison is thus not that of the law on adultery to the law on rape but rather the comparison of *moicheia* to homicide, showing the former to be 'worse' without ever allowing the juror to consider the possibility that the killing could be framed as a criminal act.

Another distinction key to Euphiletus' discussion of the lawgiver's reasoning is the distinction between what we might call the compromising and the uncompromising, or the willful and the unwilling. Euphiletus' confession that Eratosthenes offered compensation puts Euphiletus in the awkward position

of acknowledging that he bypassed the lesser punishment in favor of the greater. He therefore strains to convince the jury that he was without choice in doing so; Eratosthenes demanded a compromise that Euphiletus could not accept. Euphiletus' lack of choice in the matter bears upon the jury's choice. If Euphiletus could not countermand the law, neither can the jury. Here again the discussion of rape may help bolster his point: the rapist denies his victim's wishes, refusing compromise, whereas the adulterer's seduction brings the victim's wishes into line with his own. If the crime that entails the victim's cooperation is worse than the crime that violates the victim's wishes, then, by extension, to have made an agreement with Eratosthenes would have been worse than to kill him against his wishes. This defense of the murder of Eratosthenes would be an elaborate example of a defense strategy common in Attic oratory, namely the defendant's plea that he was compelled to act as he did. If Euphiletus had acted willfully – which is what criminals like Eratosthenes do<sup>58</sup> – then his actions would be unforgivable; making an agreement would only have lowered him to the criminal's level. But if instead Euphiletus had no choice, then the question of whether his actions were right or wrong is immaterial: if he acted on the city's behalf in carrying out its wishes, he was a hero; if, in killing rather than accepting compensation, he obeyed the law but violated social convention, he is not to be blamed. Just as Euphiletus in a way renders the jury powerless, he shows that a certain necessity binds him as well. He thereby shows himself to be civically engaged in a typically Athenian way. The speaker's good citizen conduct is shown not in terms of the positive freedoms that it awards him; it is discussed, as it should be in a Classical Athenian context, in terms of the obligations that he must fulfill in order to justify and live up to his citizen status.<sup>59</sup>

---

<sup>58</sup> “He wasn’t disputing it, gentlemen, but agreeing he’d broken the law. He was begging and pleading not to die, and was prepared to pay damages. But rather than accept that man’s proposal, I thought it right for the law of the city to be the more authoritative, and the punishment he got was the one you yourselves set down, thinking it the most just for men who act that way.” (οὐκ ἡμφεσβήτει, ὦ ἄνδρες, ἀλλ’ ὡμολόγει ἀδικεῖν, καὶ ὅπως μὲν μὴ ἀποθάνῃ ἡντεβόλει καὶ ἰκέτευεν, ἀποτίνειν δ’ ἔτοιμος ἦν χρήματα. ἐγὼ δὲ τῷ μὲν ἐκείνου τιμῆματι οὐ συνεχώρουν, τὸν δὲ τῆς πόλεως νόμον ἡξίου εἶναι κυριώτερον, καὶ ταύτην ἔλαβον τὴν δίκην, ἣν ὑμεῖς δικαιωτάτην εἶναι ἡγησάμενοι τοῖς τὰ τοιαῦτα ἐπιτηδεύουσιν ἐτάξατε, §29)

<sup>59</sup> See Ober (1989) and most recently Liddel (2007) on the complex relationship between liberties and obligations in Classical Athens and Classical Athenian thought.

At the opening of the speech, law was entirely in the jury's hands. After the discussion of the lawgiver, the jury no longer has the right to reach judgments or even to form their own opinions. The fourth and final discussion of law (§§34-36) extends this idea, warning the jury of the danger they pose to the city if they attempt to exercise their legal reasoning:

ἐμοῦ τοίνυν, ὦ ἄνδρες, οἱ μὲν νόμοι οὐ μόνον ἀπεγνωκότες εἰσὶ μὴ ἀδικεῖν, ἀλλὰ καὶ κεκελευκότες ταύτην τὴν δίκην λαμβάνειν· ἐν ὑμῖν δ' ἐστὶ πότερον χρὴ τούτους ἰσχυροὺς ἢ μηδενὸς ἀξίους εἶναι. ἐγὼ μὲν γὰρ οἶμαι πάσας τὰς πόλεις διὰ τοῦτο τοὺς νόμους τίθεσθαι, ἵνα περὶ ὧν ἂν πραγμάτων ἀπορῶμεν, παρὰ τούτους ἐλθόντες σκεψώμεθα ὃ τι ἡμῖν ποιητέον ἐστίν. οὗτοι τοίνυν περὶ τῶν τοιούτων τοῖς ἀδικουμένοις τοιαύτην δίκην λαμβάνειν παρακελεύονται. οἷς ὑμᾶς ἀξιῶ τὴν αὐτὴν γνώμην ἔχειν· εἰ δὲ μὴ, τοιαύτην ἄδειαν τοῖς μοιχοῖς ποιήσετε, ὥστε καὶ τοὺς κλέπτας ἐπαρεῖτε φάσκειν μοιχοὺς εἶναι, εὖ εἰδότας ὅτι, ἐὰν ταύτην τὴν αἰτίαν περὶ ἐαυτῶν λέγωσι καὶ ἐπὶ τούτῳ φάσκωσιν εἰς τὰς ἀλλοτρίας οἰκίας εἰσιέναι, οὐδεὶς αὐτῶν ἄγεται. πάντες γὰρ εἴσονται ὅτι τοὺς μὲν νόμους τῆς μοιχείας χαίρειν ἔαν δεῖ, τὴν δὲ ψῆφον τὴν ὑμετέραν δεδιέναι· αὕτη γάρ ἐστι πάντων τῶν ἐν τῇ πόλει κυριωτάτη. (§36)

So, gentleman, the laws haven't just absolved me of wrongdoing. They actually commanded me to render this punishment. And it's up to you whether these laws should be strong or worthless. For my part, I think cities all make laws so that when we find ourselves at a loss we can go to them and find out what to do. Well, in this instance the laws set down precisely that penalty for those who violate them – and I think you should render the same verdict as the laws do. If you don't, you'll create such impunity for *moichoi* that even burglars will be incited to claim they're *moichoi*, because they'll know full well that if they make that the charge against themselves, and if they claim it was for this that they entered other men's houses, no one will catch and stop them. Everyone will know they'll have to wave farewell to the laws on *moicheia* and tremble before your votes, since there is nothing in the city more powerful.

Euphiletus contradicts his earlier claim that the jury made the law (§29); now “cities” make them. And

the jury's power to shape law, salutary in the *prooimion* and unquestioned at §29, is now dangerous.

Law's validity is independent of the jury's thinking, even in tension with it.<sup>60</sup> The *prooimion*'s image of universal concord is replaced with an image of fractiousness and hostility. No longer are all Greeks imagined in agreement. And no longer does law arise from the collective agreement of all Greeks.

“Cities” makes laws “for us.” Nor does the city's consensus any longer include the jury. It excludes them; the city's is imagined disapproving of the jury's verdict. Because law orders the civic sphere, dysfunction in its enforcement leads to civic catastrophe.

<sup>60</sup> The orators often treat the jury as interchangeable with the city as a whole; see Blanshard (2004). Here the two are emphatically separate.

Viewed in this light, the first and last sentences of the oration are seen to encapsulate its development. The first sentence gives the jury pride of place. It kowtows to their juridical authority (“become dikasts for me in this matter”) and implicitly accepts their legitimacy as a decision-making body. In the final sentence they have no place:

ἐγὼ γὰρ νῦν καὶ περὶ τοῦ σώματος καὶ περὶ τῶν χρημάτων καὶ περὶ τῶν ἄλλων ἀπάντων κινδυνεύω, ὅτι τοῖς τῆς πόλεως νόμοις ἐπειθόμην. (§50)

After all, I’m now on trial [or in danger] over my person, my property and everything else, because I obeyed the laws of the city. Euphiletus can ignore them because, having marginalized them and reduced their power to that of rubber-stamping the city’s will, he no longer needs them. The key relationship is no longer that between jury and the speaker, as it was at the opening, but that between speaker and city. If the jurors have understood Euphiletus’ speech and been convinced by it, they will understand that they may have the authority to punish him for acting on the city’s behalf, but they do not have not the right.

### **Chapter 3: Lysias 3, “Against Simon”**

*“I wonder at what drives this man:” character development and rhetorical strategy in Lysias 3*

## Introduction

Lysias 3, a defense speech for a trial on the charge of injury with intent (*trauma ek pronoias*), is typically understood as Todd presents it: “Lys. 3 and Lys 4 form a pair of speeches dealing with drunken violence in the context of love-quarrels” (Todd 2007, 275). The dispute does appear to be rooted ultimately in romantic jealousy arising from a pederastic love triangle (although this view assumes that the speech was written for an actual suit, which is hardly certain). But the rhetorical strategy of the speech gradually downplays the love triangle and alters the audience’s understanding of it.

At first the speaker accepts that his dispute with Simon is the result of romantic competition and jealousy: he says that both he and Simon desired Theodotus (Ἡμεῖς γὰρ ἐπεθυμήσαμεν, ὃ βουλή, Θεοδότου, Πλαταϊκοῦ μαιρακίου, §5), and he stresses the embarrassment he feels at his handling of his feelings for the boy, but blames his poor conduct on Simon’s interference:

ἀξιῶ δέ, ὃ βουλή, εἰ μὲν ἀδικῶ, μηδεμιᾶς συγγνώμης τυγχάνειν· ἐὰν δὲ περὶ τούτων ἀποδείξω ὡς οὐκ ἔνοχός εἰμι οἷς Σίμων διωμόσατο, ἄλλως δὲ ὑμῖν φαίνωμαι παρὰ τὴν ἡλικίαν τὴν ἑμαυτοῦ ἀνοητότερον πρὸς τὸ μαιράκιον διατεθεῖς, αἰτοῦμαι ὑμᾶς μηδέν με χεῖρω νομίζειν, εἰδόμενος ὅτι ἐπιθυμῆσαι μὲν ἅπασιν ἀνθρώποις ἔνεστιν, οὗτος δὲ βέλτιστος ἂν εἴη καὶ σωφρονέστατος, ὅστις κοσμιώτατα τὰς συμφορὰς φέρειν δύνатаι. οἷς ἅπασιν ἐμποδὼν ἐμοὶ γεγένηται Σίμων οὕτως, ὡς ἐγὼ ὑμῖν ἐπιδείξω. §4

I think it right, members of the council, that I receive no lenience if I have done wrong. If, on the other hand, I can show in this matter that I am not liable to the charges Simon swore on oath, even if it’s otherwise clear that I acted toward the boy in a manner too foolish for my age, I ask that you think no worse of me, knowing as you do that desire affects all men, and that the finest man, and the most prudent, is the one who can endure his misfortunes most discreetly – all of which, in my case, this man Simon impeded, as I’ll show you.

By the end of the speech, though, the speaker has changed his mind. He muses that Simon never had feelings for Theodotus, that romantic love is not in his nature:

θαυμάζω δὲ μάλιστα τούτου τῆς διανοίας. οὐ γὰρ τοῦ αὐτοῦ μοι δοκεῖ εἶναι ἐρᾶν τε καὶ συκοφαντεῖν, ἀλλὰ τὸ μὲν τῶν εὐηθεστέρων, τὸ δὲ τῶν πανουργοτάτων. §44

But I wonder at what drives this man. Being a lover and being a sycophant do not seem to me to be compatible: one is characteristic of rather simple, guileless people; the other, of the most unscrupulous people.<sup>1</sup>

---

<sup>1</sup> The speaker is here wrapping up a series of arguments showing that Simon belongs to the latter category.

At this point in the speech, moreover, the speaker is silent about his own feelings. He gives no hint of his prior embarrassment, nor gives any indication that he believes his interest in Theodotus either caused his conflict with Simon or threatens his reputation among the jurors.

This change of approach lies at the center of the rhetorical strategy: the goal is to show that Simon is not the spurned, wronged lover he claims to be, that he is instead a hostile aggressor and sycophant, and that the speaker is not the hostile schemer or aspiring murderer that Simon makes him out to be, but rather a meek, vulnerable and harmless person. It will be helpful to begin by addressing background issues: prosopography, the dating of the suit, and the law on *trauma ek pronoias*.

### **Dating, prosopography, legal procedure and law**

Reference to Simon's service on Corinthian campaign under Laches gives the trial a terminus post quem of 394 BC. With the exception of Laches, no individual named in the speech is otherwise known. Theodotus is an especially problematic figure due to his uncertain age and political status, as will shortly be discussed.

The speaker defines *trauma ek pronoias* as attempted murder aforethought.<sup>2</sup> This is somewhat corroborated by details supplied in the speech: the *boulē* is presiding in the court of the Areopagus, as they would in a homicide trial (Todd 2007, 281-2), and Simon has apparently sworn the *diomōsia*, which is, Todd says, specific to homicide trials (ibid.). Phillips' thorough survey of the evidence, however, strongly suggests that, in practice, *trauma* designated only wounding with a weapon (Phillips 2007) and that there was no distinction between intent and premeditation, i.e. between the deliberate, knowing commission of an act and its commission after reflection and planning (Phillips 2007 and Loomis 1972). If this is so, then the charge must be redefined as injury with intent, and the use of the *diomōsia* cannot be peculiar to homicide trials. Phillips (2007) argues that the speaker's use of the verb *diomnumi* at §1 and his claim that Simon swore *megān kai semnon orkon* suggest the swearing not of a standard oath but one

---

<sup>2</sup> "I also believed that there could be no premeditation in wounding if somebody wounded without intent to kill" (ἔπειτα δὲ καὶ οὐδεμίαν ἡγούμην πρόνοιαν εἶναι τραύματος ὅστις μὴ ἀποκτεῖναι βουλόμενος ἔτρωσε, §41).

more severe – an apt description of the *diomōsia*, which called destruction on the false swearer (Dem 23.67). Phillips points out that §46, too, may refer to the *diomōsia*, if MacDowell is correct that the oath contained a clause concerning the relevance of arguments (MacDowell 1963, 93). On these matters the law itself, if we possessed it, would not likely provide much guidance for its use in specific trials.

Classical Athenian statutes rarely define their terms or set formal standards for their application or for the determination of guilt. Laws generally define only the circumstances under which a procedure must or may be used. It has been suggested that the Court of the Areopagus, being more specialized and manned by former members of the *boule*, may have developed more sophisticated juristic thought. Regardless of whether this is the case, I am aware of no evidence showing the court of the Areopagus to have been essentially different from the rest of the Athenian legal system; thus for the purposes of the current suit it seems likely that there were no formal standards and that jurors were expected simply to know what *trauma* and *pronoia* meant.

Some evidence of this informality, albeit indirect evidence, is perhaps to be found in the very manner in which the speaker discusses the rule of relevance, in that he mentions the rule mere moments after breaking it (Todd 2007, 282):

ἐβουλόμεν δ' ἂν ἐξεῖναι μοι παρ' ὑμῖν καὶ ἐκ τῶν ἄλλων ἐπιδείξαι τὴν τούτου πονηρίαν, ἵνα ἐπίστηθε ὅτι πολὺ ἂν δικαιότερον αὐτὸς περὶ θανάτου ἡγωνίζετο ἢ ἐτέρους ὑπὲρ τῆς πατρίδος εἰς κίνδυνον καθίστη. τὰ μὲν οὖν ἄλλα ἐάσω· ὁ δ' ἡγοῦμαι ὑμῖν προσήκειν ἀκοῦσαι καὶ τεκμήριον ἔσεσθαι τῆς τούτου θρασυτήτος καὶ τόλμης, περὶ τούτου μνησθήσομαι. ἐν Κορίνθῳ γάρ, ἐπειδὴ ὕστερον ἦλθε τῆς πρὸς τοὺς πολέμιους μάχης καὶ τῆς εἰς Κορώνειαν στρατείας, ἐμάχετο τῷ ταξιάρχῳ Λάχῃ καὶ ἔτυπεν αὐτόν, καὶ πανστρατιᾷ τῶν πολιτῶν ἐξεληθόντων, δόξας ἀκοσμότατος εἶναι καὶ πονηρότατος, μόνος Ἀθηναίων ὑπὸ τῶν στρατηγῶν ἐξεκηρύχθη. Ἔχοιμι δ' ἂν καὶ ἄλλα πολλὰ εἰπεῖν περὶ τούτου, ἀλλ' ἐπειδὴ παρ' ὑμῖν οὐ νόμιμόν ἐστιν ἔξω τοῦ πράγματος λέγειν, ἐκεῖνο ἐνθυμεῖσθε· οὗτοί εἰσιν οἱ βία εἰς τὴν ἡμετέραν οἰκίαν εἰσιόντες, οὗτοι οἱ διώκοντες, οὗτοι οἱ βία ἐκ τῆς ὁδοῦ συναρπάζοντες ἡμᾶς. (§44-6)

I would have liked to have been allowed to show you his wickedness also from other sources so that you may realize that it would be far more just for him to be on trial for his life than for him to put others in a trial that could lead to exile. I'll leave out the rest, but I'll describe the thing I think it fitting for you to hear and that I think will be proof of the insolence and audacity of the man. At Corinth, when he arrived after battle against the enemy and the expedition into Koroneia, he fought with Laches the taxiarch and beat him up – and when all the citizens marched out in full force, he was reckoned totally insubordinate and a completely worthless coward, and he alone of the Athenians was punished by the *ekkeruxis*<sup>3</sup> of the generals. I could say many other things about him, but since it is not permitted to say anything irrelevant

---

<sup>3</sup> *Ekkeruxis* was a form of dishonorable discharge (Todd 2007, 342, citing Harrison 1968).



before you, keep this in mind: these men are the ones who enter our house by force, who pursue us, who snatch us off the road by force.

A speaker so cavalier about evidence even as he discusses the rule that governs its introduction should not be expected to show a less freewheeling attitude elsewhere in the speech. If the speechwriter expected the *boulē* to judge in strict adherence to the letter of the law or the oath, he would have fashioned an approach better fitted to their exacting tastes.

My goal in this chapter is to elucidate a rhetorical strategy, not to address problems in the history of Classical Athenian law. But it goes without saying that the rhetorical strategy of a forensic speech must take the law into account. For my purposes, then, it is important to note two things: first, that Classical Athenian laws on homicide and assault emphasize mental state and intention;<sup>4</sup> second, that the speeches written for suits on assault and murder do the same.<sup>5</sup> The law on *trauma ek pronoias* thus represents a kind of intensification of a normal state of affairs. Like other laws on assault or homicide, it stresses the defendant's mentality, but unlike these other laws, it puts the defendant on trial specifically for that intention. If it was normal for litigants engaged in suits on assault and homicide to pay particular attention to states of mind, then in a trial on *trauma ek pronoias* mental states should require still greater attention to it on the part of the speechwriter, because an accusation that concerns a state of mind demands a defense strategy that focuses on mental states. It is perhaps for this reason that narrative and characterization are unusually rich in Lysias 3.

### **The characters**

Laches is the only individual named in the course of the speech who has been identified with a known historical figure, but the text supplies detail enough for a rough understanding of the three main players: the speaker, Simon and Theodotus,. The speaker's extended leave from the city (§10), *antidosis* (§20) and liturgies (§47) give evidence of considerable wealth. His age cannot be fixed precisely but he

---

<sup>4</sup> I am uncertain whether Todd would hew to this view, but I take Todd (1993) 268-276 as evidence in support of it.

<sup>5</sup> Lysias 1, Antiphon's First Tetralogy and Demosthenes' *Against Meidias* offers examples of speeches where charges of murder or assault are framed in terms of intention.

is advanced enough in years that he feels it necessary or at least credible to confess that his sexual conduct towards the boy Theodotus was unbecoming of a man of his age (§4). Todd (2007, 279) proposes that he may have been involved in politics, citing the following passage:

ἐγὼ τοίνυν, ὦ βουλή, ἡγούμενος μὲν δεινὰ πάσχειν, αἰσχυρόμενος δέ, ὅπερ ἤδη καὶ πρότερον εἶπον, τῇ συμφορᾷ, ἡνειχόμεν, καὶ μᾶλλον ἡρούμην μὴ λαβεῖν τούτων τῶν ἀμαρτημάτων δίκην ἢ δόξαι τοῖς πολίταις ἀνόητος εἶναι, εἰδὼς ὅτι τῇ μὲν τούτου πονηρίᾳ πρέποντα ἔσται τὰ πεπραγμένα, ἐμοῦ δὲ πολλοὶ καταγελάσσονται τοιαῦτα πάσχοντος τῶν φθονεῖν εἰθισμένων, ἐάν τις ἐν τῇ πόλει προθυμῇται χρηστὸς εἶναι. (§9)

For my part, members of the council, I felt that I had been badly treated, but as I said earlier, I was ashamed of my misfortune, put up with it, and chose not to bring an action over these offences rather than to appear foolish to my fellow-citizens. I knew that what had happened would be seen as appropriate for a criminal like him, but that I would be laughed at for my misfortunes by many of those who are normally jealous of somebody who seeks to play a responsible role in the polis.

It is unlikely that the speaker is here referring to his political career: the phrase ἐάν τις ἐν τῇ πόλει προθυμῇται χρηστὸς εἶναι refers to only to the hypothetical suit that the speaker chose not to bring, not to a general, persisting effort to play “a responsible role in the city.” The speech provides no other information that could be construed as evidence of a political career. As for the speaker’s life outside the public eye, his family situation is unusual: his female relatives seem to live with him (§6), suggesting that they are unmarried, and he himself gives no indication of having married or produced offspring. Of Simon less can be said with certainty, as information about him in the speech is scanty and almost uniformly untrustworthy. The speaker portrays him as the stereotypical young man: hot-headed and given to drunken carousal. This may be the truth, but its rhetorical convenience makes it dubious, especially given the speaker’s contrasting claims about his own age, cool-headedness and aversion to conflict. We do not know whether Simon is married or has children, and of his assets we know only that he claims to be less wealthy than the speaker, apparently valuing his estate at 250 drachmas. Even if the valuation is, as the speaker claims, a lie, Simon is certainly poorer by far than his opponent.

Theodotus is called *meirakion* both in the context of the narrative (i.e. some years prior to the trial) and at the time of the suit, making him probably a youth in his late teens at the time of the trial.<sup>6</sup> His

---

<sup>6</sup> The word *paidion* does not designate slave status in Lysias (Todd 2007, 279). The speaker’s single use of it in the speech (§33) emphasizes only Theodotus’ allegedly helpless state.

political status is more difficult to determine. As a Plataean (§5, quoted above) he is presumably entitled to Athenian citizenship if he is freeborn (Todd 2007, 277). But the speaker's remark that the boy is liable to the *basanos* (§33) complicates that picture. Only a slave should be liable to the *basanos*.<sup>7</sup> Lysias 3 is in fact the only surviving text in which a non-Athenian is treated as liable to the procedure.<sup>8</sup> The speech therefore seems to represent Theodotus in several contrary ways: as the freeborn citizen of a closely allied polis; as a foreign slave; and, in the eyes of the law, as an Athenian slave. His absence from the proceedings is notable and unfortunate,<sup>9</sup> since as witness to nearly every event described in the speech he would have greatly assisted the jury in deciding between the speaker and Simon's divergent accounts of

---

<sup>7</sup> Gagarin (1996) distinguishes three varieties of torture in Athenian law: penal torture, never called *basanos*, referring to the punishment of slaves and citizens; judicial torture, referring "to the torture of suspects and witnesses, usually in a criminal investigation" (ibid., 2); and evidentiary torture, unique to Athens, referring to "the torture of an innocent slave (never a free witness) for the purpose of verifying information, usually of a rather mundane sort in a civil suit" (ibid., 3).

<sup>8</sup> See Todd (2007) 277ff on both the boy's status and the uniqueness of Lysias 3 in connection with the *basanos*. There has been some disagreement as to whether the *basanos* could in fact be applied to free non-citizens in cases on more serious matters like *phonos* and *trauma*. Carey (1988) favors the view that it was applied only to slaves, never to free non-citizens, but he puts too much faith in the evidence from Lysias 4, where it is explicitly said that a freed slave girl, and thus a free non-citizen, cannot be subjected to torture (4.12-4). Lysias 4 is unusual in too many ways to be taken in this fashion as unproblematic historical evidence. (For instance, it records an exceptionally rare instance of an *antidosis* actually leading to partial exchange of property (Todd 2007, 347-8).) Todd favors the view that the speech's peculiarities are explained by mutilation of the text (Todd 2007, 349-50). Like Todd, I have not consulted Falk (1843), who apparently argues at length and in detail for the view that the speech is not Lysianic nor even a true law-court speech but rather a rhetorical exercise written long after Lysias and the other Classical Attic orators. Even without consulting Falk, though, I am inclined to reject the speech as well: it has far too many bizarrely unlikely parallels with Lysias 3, suggesting it may be a *précis*. And although ascriptions based on aesthetic criteria are at best dubious, Lysias 4 has a remarkably bland prose style, and its arguments are both weak and at times peculiarly alien to the conventions of Classical forensic oratory. See Carey (1988) on the history of the dispute over whether free aliens could be tortured. MacDowell accepts that there is evidence for this but notes "it is not clear in what circumstances this was possible; more often aliens appeared as ordinary witnesses, without torture" (1978, 246). Todd's *Shape of Athenian Law* (1993) offers no opinion on the matter, but Todd later seems to accept that free aliens could indeed be tortured (Todd 2007, 280), and proposes that Lysias may have deliberately blurred Theodotus' status (ibid., 281).

<sup>9</sup> Carey believes that the phrase τοῦτό γε τὸ παιδίον means that the speaker is "gesturing to [Theodotus]" (Carey 1989, 109), who would therefore be present in the courtroom. The speech, however, provides no other information that could be construed as evidence of the boy's presence. And the use of the demonstrative ought to be interpreted differently: the demonstrative τοῦτό refers not to the "child" physically present in the courtroom, but to the child who could not have helped the speaker *in the past* (τοῦτό γε τὸ παιδίον, ὃ ἐπικουρῆσαι μὲν μοι οὐκ ἂν ἐδύνατο). Todd does not comment on the presence or absence of Theodotus vis-à-vis that passage, but nowhere suggests that he follows Carey.

the dispute. That absence has numerous possible explanations. Certainly there is no reason to assume that either Simon or the speaker will have retained the boy's services in the years separating their altercation from Simon's lawsuit. It is possible that Theodotus returned to Plataea; his having opted not to accept Athenian citizenship if it was available may signal that his stay in the city was intended to be temporary. If Simon and the speaker still feel any warmth for or attraction to Theodotus, moreover, and if Theodotus is indeed liable to the *basanos*, it is again possible – although strikes me as far-fetched – that neither man was willing to see his beloved tortured. The likeliest explanation for Theodotus' absence and his failure to provide testimony is that, even if he was a slave, he was not the sort of slave that tended to be subjected to *basanos*, and was owned by of neither party engaged in the suit:

Since evidentiary βάσανος always resulted from a challenge, it always involved two parties, in contrast with judicial torture where normally only one party (the victim or his representative, or a public official) carried out the interrogation; Thür calls this a “one-sided βάσανος” (43-57). The procedure of the challenge to βάσανος was controlled by rules that apparently remained constant throughout the century of our evidence (ca. 420-320). If a litigant wanted to introduce the evidence of servants into court [*Gagarin's footnote*: In almost all cases the slave in question is a household or personal servant, usually designated as οἰκέτης, πᾶϊς or θεράπεινα. The general term δοῦλος is rarely used except in generalizations about βάσανος, where there is usually a contrast (explicit or implicit) with ἐλεύθερος.], he first issued a challenge offering his own or requesting his opponent's slaves for interrogation; slaves belonging to a third party were rarely proposed (Ant. 6.23). (Gagarin 1996, 4)

### **Simon's version of events, the speaker's, and points of instructive contradiction**

Details scattered across the speech (but concentrated in the *diēgēsis*) permit only a limited reconstruction of Simon's charges and narrative. He certainly claimed to have entered into an agreement with Theodotus, paying 300 drachmas for the boy's sexual services (§22), and presented himself as being both romantically interested in the boy and wrongly, perhaps illegally, deprived of access to him (§39): the speaker partially confirms this by opening the *diēgēsis* with the statement that both he and Simon desired the boy (§5), and by the fact that Simon three times discovers Theodotus' location and then either goes there (§6, 11) or tries to abduct the boy (§15ff). The speaker attributes two further claims to Simon, both of which he rejects: that the speaker, shortly after causing him grievous injury, repaid the 300 drachmas that he had paid for the boy's services (§25), which, if true, would support Simon's claim that

he was illegitimately or illegally deprived of access to the boy; and that the speaker appeared at his home, brandishing an *ostrakon* (§28). This latter incident is apparently the one that Simon has presented as evidence of *pronoia* (ibid.); Simon has apparently claimed that, on that occasion, a fight broke out that resulted in the serious injury for which he brought suit. The speaker denies this:

λέγει δ' ὡς ἡμεῖς ἤλθομεν ἐπὶ τὴν οἰκίαν τὴν τούτου ὄστρακον ἔχοντες, καὶ ὡς ἠπειλουν αὐτῷ ἐγὼ ἀποκτενεῖν, καὶ ὡς τοῦτό ἐστιν ἡ πρόνοια. ἐγὼ δ' ἡγοῦμαι, ὃ βουλή, ῥάδιον εἶναι γνῶναι ὅτι ψεύδεται, οὐ μόνον ὑμῖν τοῖς εἰωθόσι σκοπεῖσθαι περὶ τῶν τοιούτων, ἀλλὰ καὶ τοῖς ἄλλοις ἅπασιν. τῷ γὰρ ἂν δόξειε πιστὸν ὡς ἐγὼ προνοηθεῖς καὶ ἐπιβουλεύων ἤλθον ἐπὶ τὴν Σίμωνος οἰκίαν μεθ' ἡμέραν, μετὰ τοῦ μειρακίου, τοσούτων ἀνθρώπων παρ' αὐτῷ συνειλεγμένων, εἰ μὴ εἰς τοῦτο μανίας ἀφικόμην ὥστε ἐπιθυμεῖν εἶς ὢν πολλοῖς μάχεσθαι, ἄλλως τε καὶ εἰδὼς ὅτι ἀσμένως ἂν με εἶδεν ἐπὶ ταῖς θύραις ταῖς αὐτοῦ (§§28-9)

He says we came to his house carrying an *ostrakon*, and that I threatened to kill him – and that this constitutes “premeditation.” In my opinion, however, members of the council, it is easy not only for you (who are experienced in examining cases like this) but for everybody else to see that he is lying. To whom could it appear credible that, after premeditation and plotting, I came to Simon’s house in daytime with the young man, when there were so many people gathered there, unless I had reached such a level of insanity that I was passionate to fight on my own against so many – particularly when I knew that he would be pleased to see me at his doors?

Simon must have portrayed their encounter quite differently: if the speaker’s account of the facts is true, then there truly is no conceivable reason for him to have called on Simon at his own home, nor any plausibility in Simon’s charge that he did.<sup>10</sup> Certainly it is to be expected that the speaker will contradict his opponent’s narrative: no Lysianic speaker accepts whole cloth the opposing side’s account of the facts. And it is to be expected, too, that the speaker will not give Simon’s narrative equal time: the speaker of a Lysianic oration, as a rule, acknowledges his opponent’s claims only to refute them; moreover, if Simon spoke first, the jury can perhaps be relied upon to fill lacunae for themselves. But if the speaker’s narrative is unusually detailed, his account of the opposing side is unusually sparing and difficult to follow. One can only assume that the speechwriter omitted key details.

<sup>10</sup> Frederick Ahl suggests to me that the reference to the *ostrakon*, which has puzzled commentators, may in fact be a joke, or at least a tongue-in-cheek allusion to the speaker’s narrative of the crime: Simon’s claim that the speaker presented his opponent with an *ostrakon* may suggest an attempt at figuratively exiling his enemy, disenfranchising him and separating him from the city; on the speaker’s version of their suit, however, it is he who leaves the city, going into voluntary exile.

## The speaker's version

At almost no point does the speaker's narrative corroborate Simon's. The speaker opens the *diēgēsis* with no acknowledgment of a formal contract – and, as noted, later denies its existence. He says rather that both he and Simon “desired the boy” and that Theodotus suffered many injuries from Simon as the unwilling victim of Simon's advances:

Ἡμεῖς γὰρ ἐπεθυμήσαμεν, ὦ βουλή, Θεοδότου, Πλαταϊκοῦ μειρακίου, καὶ ἐγὼ μὲν εὖ ποιῶν αὐτὸν ἡξίου  
εἶναι μοι φίλον, οὗτος δὲ ὑβρίζων καὶ παρανομῶν ᾤετο ἀναγκάσειν αὐτὸν ποιεῖν ὅ τι βούλοιτο. ὅσα μὲν  
οὖν ἐκεῖνος κακὰ ὑπ' αὐτοῦ πέπονθε, πολὺ ἂν ἔργον εἴη λέγειν· ὅσα δὲ εἰς ἐμὲ αὐτὸν ἐξημάρτηκεν, ἡγοῦμαι  
ταῦθ' ὑμῖν προσήκειν ἀκοῦσαι. (§5)

We were both attracted, members of the council, to Theodotus, a young man from Plataea. I thought it right to win him over by treating him well. Simon, on the other hand, behaved in an arrogant and lawless fashion, and expected to force him to do whatever he himself wanted. It would be a lengthy task to recount all the mistreatment which that person suffered at his hands, but I think you should learn the magnitude of the offences he committed against me personally.

In no way implying that Theodotus was involved in his dispute with Simon, let alone the cause, the speaker presents *himself* as the sole target and victim of Simon's attacks. Over the course of the *diēgēsis* the speaker repeatedly returns to this idea – that Theodotus was not Simon's true target, and that the speaker is the true victim.

The first occasion of the speaker's victimization is that on which Simon, learning that Theodotus is with the speaker (πυθόμενος γὰρ ὅτι τὸ μειράκιον ἦν παρ' ἐμοί, ἐλθὼν ἐπὶ τὴν οἰκίαν τὴν ἐμὴν νύκτωρ μεθύων, §5), invades his home and forces his way into the presence of the speaker's female relatives. Simon finds the speaker absent and is ejected from the home by his own gang, who find his conduct intolerable.

καὶ τοσοῦτου ἐδέησεν αὐτῷ μεταμελῆσαι τῶν ὑβριζμένων, ὥστε ἐξευρὼν οὗ ἐδειπνοῦμεν ἀτοπώτατον  
πρᾶγμα καὶ ἀπιστότατον ἐποίησεν, εἰ μὴ τις εἰδείη τὴν τούτου μανίαν. ἐκκαλέσας γάρ με ἔνδοθεν, ἐπειδὴ  
τάχιστα ἐξῆλθον, εὐθύς με τύπτειν ἐπεχείρησεν· ἐπειδὴ δὲ αὐτὸν ἡμυνάμην, ἐκστάς ἔβαλλέ με λίθοις. (§§7-8)

So far from being ashamed of this outrageous conduct, he found out where I was having dinner, and did something totally inappropriate and (to anybody unfamiliar with his criminal insanity) unbelievable: he called me out from inside the house, and as soon as I came out, he immediately tried to hit me. When I defended myself, he moved off and tried to pelt me with stones.

The object of Simon's violence is at first Theodotus (although the speaker stops short of saying so), but upon his arrival at the speaker's house, Simon's attention shifts – first to the speaker's family and then to the speaker himself.

ἐγὼ τοίνυν, ὃ βουλή, ἡγούμενος μὲν δεινὰ πάσχειν, αἰσχυρόμενος δέ, ὅπερ ἤδη καὶ πρότερον εἶπον, τῇ συμφορᾷ, ἡνειχόμεν, καὶ μᾶλλον ἡρούμην μὴ λαβεῖν τούτων τῶν ἀμαρτημάτων δίκην ἢ δόξαι τοῖς πολίταις ἀνόητος εἶναι, εἰδὼς ὅτι τῇ μὲν τούτου πονηρία πρέποντα ἔσται τὰ πεπραγμένα, ἐμοῦ δὲ πολλοὶ καταγελάσσονται τοιαῦτα πάσχοντος τῶν φθονεῖν εἰθισμένων, ἐάν τις ἐν τῇ πόλει προθυμῇται χρηστὸς εἶναι. (§9)

For my part, members of the council, I felt that I had been badly treated, but as I said earlier, I was ashamed of my misfortune, put up with it, and chose not to bring an action over these offences rather than to appear foolish to my fellow-citizens. I knew that what had happened would be seen as appropriate for a criminal like him, but that I would be laughed at for my misfortunes by many of those who are normally jealous of somebody who seeks to play a responsible role in the city.

Theodotus, initially the implied object of Simon's visit to the speaker's house, has become at best a

bystander to Simon's conflict with the speaker. The speaker departs the city specifically so as to escape

being further targeted and harassed:

οὕτω δὲ σφόδρα ἡπορούμην ὅ τι χρῆσαιμην, ὃ βουλή, τῇ τούτου παρανομίᾳ, ὥστε ἔδοξέ μοι κράτιστον εἶναι ἀποδημῆσαι [ἐκ τῆς πόλεως]. λαβὼν δὲ τὸ μειράκιον (ἅπαντα γὰρ δεῖ τάληθ' ἰλέγειν) ὤχόμεν ἐκ τῆς πόλεως. (§10)

I was at such a loss as to how to deal with his lawlessness, members of the council, that I decided it would be best to go abroad. So I took the young man – it is necessary to tell you the whole truth – and left the polis.

The duration of his absence is unspecified, but long enough, we are told, that Simon could be expected to

have forgotten the boy:

ἐπειδὴ δὲ ὥμην ἱκανὸν εἶναι τὸν χρόνον Σίμωνι ἐπιλαθέσθαι μὲν τοῦ νεανίσκου, μεταμελῆσαι δὲ τῶν πρότερον ἡμαρτημένων, ἀφικνοῦμαι πάλιν. καγὼ μὲν ὤχόμεν εἰς Πειραιᾶ, οὗτος δ' αἰσθόμενος εὐθέως ἦκοντα τὸν Θεόδοτον καὶ διατρίβοντα παρὰ Λυσιμάχῳ, ὃς ᾔκει πλησίον τῆς οἰκίας ἧς οὗτος ἐμεμίσθωτο, παρεκάλεσέ τινας τῶν τούτου ἐπιτηδείων. καὶ οὗτοι μὲν ἡρίστων καὶ ἔπινον, φύλακας δὲ κατέστησαν ἐπὶ τοῦ τέγου, ἵν', ὅποτε ἐξέλθοι τὸ μειράκιον, εἰσαρπάσειαν αὐτόν. (§10-11)

When I thought enough time had passed for Simon to have forgotten the young man and to regret his earlier offenses, I came back again. I went to the Piraeus, but this man immediately heard that Theodotus had returned and was staying with Lysimachus, who was living close to the house which this man had rented, so he called on some of his friends, and they were eating and drinking, and set a look-out on the roof, so that when the young man came out they would be able to seize him.

That the boy is Simon's object is obvious, and we have no reason to expect that the speaker would say, in

so many words, "Simon went to the house of Lysimachus in order to see Theodotus, whom he desired."

But it is important to note that the language of intention, interest and desire is absent from the speaker's

account of Simon's actions. This omission enables a subtle shift in narrative logic, without apparent

contradiction, whereby Simon's focus is again transferred from Theodotus to the speaker:

ἐν δὲ τούτῳ τῷ καιρῷ ἀφικνοῦμαι ἐγὼ ἐκ Πειραιῶς, καὶ τρέπομαι παριὼν ὡς τὸν Λυσίμαχον· ὀλίγον δὲ χρόνον διατρίψαντες ἐξερχόμεθα. οὗτοι δ' ἤδη μεθύοντες ἐκπηδῶσιν ἐφ' ἡμᾶς. καὶ οἱ μὲν τινες αὐτῷ τῶν παραγενομένων οὐκ ἠθέλησαν συνεξαμαρτεῖν, Σίμων δὲ οὐτοσὶ καὶ Θεόφιλος καὶ Πρώταρχος καὶ Αὐτοκλῆς εἶλκον τὸ μειράκιον. ὁ δὲ ρίψας τὸ ἱμάτιον ὄχρετο φεύγων. ἐγὼ δὲ ἡγούμενος ἐκεῖνον μὲν ἐκφεύξεσθαι, τούτους δ', ἐπειδὴ τάχιστα ἐντύχοιεν ἀνθρώποις, αἰσχυνομένους ἀποτρέψεσθαι – ταῦτα διανοηθεὶς ἐτέραν ὁδὸν ὥχόμην ἀπιών· οὕτω σφόδρ' αὐτοὺς ἐφυλαττόμην, καὶ πάντα τὰ ὑπὸ τούτων γιγνόμενα μεγάλῃν ἐμαυτῷ συμφορὰν ἐνόμιζον. (§10-11)

At that exact moment I arrived from Piraeus, and because I was passing I made my way to Lysimachus' house. We spent a short time inside, and then came out. These men, who were now drunk, jumped on us. Some who were present refused to join him in this criminal behavior, but Simon here, together with Theophilus, Protarchus, and Autocles, began dragging away the young man. He, however, threw off his cloak and ran away. I supposed that he would escape, and that these men would give up the chase as soon as they happened to meet people, so with this in mind I went off by another route. You see how carefully I tried to avoid them, and regarded all of their actions as a great misfortune to myself.

If the speaker had stated clearly that Simon and his gang were interested only in Theodotus, it would be obvious that the speaker was a bystander; the claim the gang jumped on “us” would be self-evidently false. Even stranger would be the speaker's claims that he “carefully tried to avoid them” and “regarded all of their actions as a great misfortune to [himself].” if Simon was not pursuing the speaker, there was nothing to avoid; and if Theodotus was the target, Simon's assault is not the speaker's misfortune at all. As in the first episode of conflict, the speaker takes Theodotus' place.

The scene continues at the fuller Molon's shop, where Theodotus is pursued by Simon's gang.

Yet again Theodotus is obviously their interest, and yet again the speaker takes his place:

μετὰ δὲ ταῦτα τὸ μὲν μειράκιον εἰς γναφεῖον κατέφυγεν, οὗτοι δὲ συνεισπεσόντες ἤγον αὐτὸν βία, βοῶντα καὶ κεκραγότα καὶ μαρτυρόμενον. συνδραμόντων δὲ ἀνθρώπων πολλῶν καὶ ἀγανακτούντων τῷ πράγματι καὶ δεινὰ φασκόντων εἶναι τὰ γιγνόμενα, τῶν μὲν λεγομένων οὐδὲν ἐφρόντιζον, Μόλωνα δὲ τὸν γναφέα καὶ ἄλλους τινὰς ἐπαμύνειν ἐπιχειροῦντας συνέκοψαν. ἤδη δὲ αὐτοῖς οὔσι παρὰ τὴν Λάμπωνος οἰκίαν ἐγὼ μόνος βαδίζων ἐντυχάνω, δεινὸν δὲ ἡγησάμενος εἶναι καὶ αἰσχρὸν περιδεῖν οὕτως ἀνόμως καὶ βιαίως ὑβριζθέντα τὸν νεανίσκον, ἐπιλαμβάνομαι αὐτοῦ. οὗτοι δέ, δι' ὃ τι μὲν τοιαῦτα παρενόμουν εἰς ἐκεῖνον, οὐκ ἠθέλησαν εἰπεῖν ἐρωτηθέντες, ἀφόμενοι δὲ τοῦ νεανίσκου ἔτυπτον ἐμέ. μάχης δὲ γενομένης, ᾧ βουλή, καὶ τοῦ μειρακίου βάλλοντος αὐτοὺς κάμοῦ περὶ τοῦ σώματος ἀμυνομένου καὶ τούτων ἡμᾶς βαλλόντων, ἔτι δὲ τυπτόντων αὐτὸν ὑπὸ τῆς μέθης κάκεινου ἀμυνομένου, καὶ τῶν παραγενομένων ὡς ἀδικουμένοις ἡμῖν ἀπάντων ἐπικουρούντων, ἐν τούτῳ τῷ θορύβῳ συντριβόμεθα τὰς κεφαλὰς ἅπαντες. καὶ οἱ μὲν ἄλλοι οἱ μετὰ τούτου παροινήσαντες, ἐπειδὴ τάχιστα με εἶδον μετὰ ταῦτα, ἐδέοντό μου συγγνώμην ἔχειν, οὐχ ὡς ἀδικούμενοι ἀλλ' ὡς δεινὰ πεποιηκότες· (§16-8)

After this [after the speaker and Theodotus fled in opposite directions], the young man ran into a fuller's shop, but these men charged in together, and started to drag him off by force, although he was yelling and shouting and calling on people to be witnesses. Lots of people rushed up, angry at what was happening, and were saying that what was happening was terrible. However, they took no notice of what was being



said, but beat up Molon the fuller and several others who tried to protect him.<sup>11</sup> They were already opposite Lampon's house when I happened to come across them, while I was walking along on my own. I thought it would be a terrible and shameful thing to look on while the young man was suffering hybris so unlawfully and violently, so I grabbed hold of him. These men refused to respond when I asked why they were acting illegally towards him. Instead, they let go of the young man and started hitting me. A battle developed, members of the council. The young man was pelting them. He was defending his own life. They were pelting us. They were hitting him, because they were drunk. I was defending myself. Those present [i.e. bystanders] were all helping us, because we were the ones who were being wronged. And in the course of the melee, we all got our heads broken. As soon as they saw me afterward, the rest of those who had joined in this man's drunken misbehavior asked my forgiveness – not as victims but as those who had done wrong.

Theodotus' victimization is stressed at the time of his abduction, but he again fades from view. Even Simon's henchmen, in the end, grasp that the speaker is the man to whom they owe an apology.

### **The differences between Simon's account of the facts and the speaker's**

As noted, the speaker's narrative almost systematically contradicts Simon's. On the one hand, Simon claims to have made an arrangement with Theodotus, and asserts that his claim on Theodotus had legal priority over any romantic or informal claims the speaker might have had; the speaker's monopolization of Theodotus' attention thus constituted potentially criminal obstruction and deprivation. The speaker, in turn, denies that any such arrangement was ever reached, denying Simon's claim of priority or legal entitlement to the boy's company as well. Indeed, the speaker tells us not only that there was no arrangement, but that the arrangement Simon claims to have reached is a mathematical impossibility: Simon claims to have paid more for the boy (300 drachmas) than he actually possesses (250 drachmas).<sup>12</sup> Whatever the facts may be, it is obviously in the speaker's interest to deny Simon's arrangement with Theodotus. By doing so, he puts his claims on the boy's attention on an equal footing with Simon's; in the absence of a contract, his and Simon's respective relationships with the boy would be not at the discretion of the law but at the discretion of Theodotus himself – exactly as the speaker

---

<sup>11</sup> The spontaneous involvement of passersby primes the reader not to protest the speaker's subsequent intervention; if strangers sprang to Theodotus' aid, certainly the speaker was not wrong in doing the same.

<sup>12</sup> Past commentary has not questioned the validity of the speaker's calculations, but the math is either deceptive or inept: Simon's net worth at the time of the trial does not constitute the sum from which the cost of Theodotus' services four years ago will have been deducted; there is no contradiction in his being poorer at the time of the trial than four years prior. Bolonyai (2008) observes mathematical trickery in Lysias 17 as well.

presents their rivalry at the opening of the *diēgēsis*. This manner of presenting their dispute also serves to make Theodotus' feelings about Simon more relevant to the suit: far from making a deal with Simon, he apparently hated him (§31); this would be no surprise, if, as the speaker tells us, Simon pursued the boy through force (§5); and it would show Simon, lacking any claim on the boy, to be the one who acted inappropriately or illegally. The speaker, in denying the existence of the contract, thus turns Simon's charges somewhat on their head: Simon claims to have had a legal right to Theodotus by virtue of a binding, consensual contract; the speaker claims, to the contrary, that Simon had no right to him whatsoever and pursued him illegally against his wishes. The speaker's narrative turns the tables on Simon's charges also by portraying the speaker as the helpless victim of Simon's plotting and violence: Simon has claimed that the boy was his primary interest; but the speaker repeatedly shows himself to be the target of Simon and his gang. The speech attempts to make Simon's charges redound on him: Simon claims to have been harmed by the speaker, but the speaker claims to have been harmed by Simon; Simon claims that the speaker plotted and committed *pronoia*, but the speaker claims to be the helpless victim of Simon's plotting (§15).

### **Characterization**

There can be little confusion as to how the jury is meant to view the speaker, given that he repeatedly explains that he did not want conflict, tried to avoid his opponent, and fears disapproval from the jury in the event that his private affairs become public knowledge: peaceable, fearful and meek, the speaker wishes to be seen as the very opposite of the man who would seek out conflict, let alone plan murder. Thus he stresses his attempts to avoid Simon, and in order to combat the charge that he premeditated violence of any sort, he repeatedly stresses that his encounters with Simon took him by surprise: Simon suddenly and unexpectedly arrives at the speaker's home (§5ff) and then unexpectedly finds him where he is dining (§7); Simon's appearance after the speaker's return from exile is in fact doubly a surprise (Simon should have forgotten Theodotus, §11; and the trap Simon lays is itself a

surprise, §12); the speaker wrongly expects Theodotus to escape abduction (ibid.); and crosses paths with the boy, in the process of being abducted, only by chance (§17).

The listener's understanding of the speaker as a character comes largely from the speech's frequent commentary on his internal life. It is the focus even of the *prooimion*: in §1-5 the speaker seems ostensibly to be commenting on the circumstances of the lawsuit, but the discussion is in fact a series of reflections on his emotional state: surprise at Simon's bringing suit;<sup>13</sup> comfort that the *boulē* preside;<sup>14</sup> embarrassment about his conduct towards the boy.<sup>15</sup> The *prooimion* even ends with a gnomic discussion of the universality of desire, setting the measure of a man's *sōphrosunē* at his ability to maintain decorum in the face of erotic desire:

εἰδότας ὅτι ἐπιθυμῆσαι μὲν ἅπασιν ἀνθρώποις ἔνεστιν, οὗτος δὲ βέλτιστος ἂν εἴη καὶ σωφρονέστατος, ὅστις κοσμιώτατα τὰς συμφορὰς φέρειν δύναται. (§4)

knowing as you do that desire affects all men, and that the finest man, and the most prudent, is the one who can endure his misfortunes most discreetly – all of which, in my case, this man Simon impeded, as I'll show you.

Commentary on the speaker's internal life is most prevalent in the *diēgēsis*, as the speaker stresses the gentleness of his conduct towards Theodotus and his regard for the boy's wishes; his outrage at being mistreated by Simon but fear of humiliation if the matter should come to trial; uncertainty as to how to cope with Simon's aggression; resignation that Simon's aggressions are his personal misfortune; anger at seeing Theodotus abducted; and desire to defend the boy.

---

<sup>13</sup> "I did not expect him to reach such a level of audacity" (οὐκ ἂν ποτ' αὐτὸν εἰς τοσοῦτον τόλμης ἡγησάμην ἀφικέσθαι, §1)

<sup>14</sup> "If it had been anybody else who was going to decide my case, I would have been very worried about the danger. I am aware that carefully prepared tricks and unlucky chances sometimes occur in such a way that wholly unexpected outcomes befall those on trial. However, I am confident that I shall receive justice, because it is before you that I am appearing." (ἄλλοι τινὲς ἔμελλον περὶ ἐμοῦ διαγνώσεσθαι, σφόδρα ἂν ἐφοβούμην τὸν κίνδυνον, ὥρῳ ὅτι καὶ παρασκευαῖ καὶ τύχαι ἐνίοτε τοιαῦται γίνονται, ὥστε πολλὰ καὶ παρὰ γνώμην ἀποβαίνειν τοῖς κινδυνεύουσιν. εἰς ὑμᾶς δ' εἰσελθὼν ἐλπίζω τῶν δικαίων τεύξεσθαι, §§2-3).

<sup>15</sup> "I am particularly upset, members of the council, that I have been forced to address you on these matters. I had put up with being mistreated, because I would have been ashamed if many people had known about my story." (μάλιστα δ' ἀγανακτῶ, ὃ βουλὴ, ὅτι περὶ [τῶν] πραγμάτων εἰπεῖν ἀναγκασθήσομαι πρὸς ὑμᾶς, ὑπὲρ ὧν ἐγὼ αἰσχυρόμενος εἰ μέλλοιεν πολλοὶ μοι συνείσεσθαι, ἡνεσχόμεν ἄδικούμενος; §3)

Further heightening the listener's sense of the speaker's peaceable nature are the speech's, and especially the narrative's, implicit comparisons of the speaker and Simon. Commentary on the speaker's internal life frequently appears alongside observations or episodes involving Simon that show the extent of their differences:

Simon	Speaker
Simon sues in a matter in which he deserves punishment <sup>16</sup>	The speaker would prefer to avoid litigation despite deserving justice. <sup>17</sup>
Simon pursues Theodotus with lawlessness and force. <sup>18</sup>	The speaker pursues him with gentleness. <sup>19</sup>
Simon breaks into the speaker's house and shames his female relatives (§6-7).	The speaker leaves the city so as to escape harassment (§10).
Simon schemes, setting a trap for the speaker and Theodotus after their return (§10).	The speaker and Theodotus are caught, helpless and unsuspecting, in Simon's trap. (§11)
Simon gives chase.	The speaker and Theodotus flee. <sup>20</sup>
Simon kidnaps Theodotus (§15ff).	The speaker attempts to free him (§17).
Simon's own friends turn against him (§7 & §12) and apologize to the speaker (§19).	Even strangers spontaneously leap to the aid of the speaker and Theodotus (§15)

The listener thereby learns, without being told explicitly, that Simon is the speaker's polar opposite, lacking all of his good qualities – the qualities that show him to be innocent of *pronoia* and unlikely to cause *trauma*. These implied comparisons also throw into sharper relief the baseness of Simon's actions, with the result that Simon seems to emerge vividly as a richly foul individual, a man of pure impulse and

<sup>16</sup> ὥστε ὑπὲρ ὧν αὐτὸν ἔδει δοῦναι δίκην, ὑπὲρ τούτων ὡς ἀδικούμενον ἐγκλημα ποιήσασθαι (§1)

<sup>17</sup> ἡνεσχόμεν ἀδικούμενος (§3); ἐγὼ τοίνυν, ὦ βουλή, ἡγούμενος μὲν δεινὰ πάσχειν, αἰσχυρόμενος δέ, ὅπερ ἤδη καὶ πρότερον εἶπον, τῇ συμφορᾷ, ἡνειχόμεν (§9).

<sup>18</sup> οὗτος δὲ ὑβρίζων καὶ παρανομῶν ὤετο ἀναγκάσειν αὐτὸν ποιεῖν ὅ τι βούλοιτο. (§5)

<sup>19</sup> ἐγὼ μὲν εὖ ποιῶν αὐτὸν ἡξίουμαι εἶναι μοι φίλον (§5)

<sup>20</sup> ἐγὼ μὲν γὰρ ἡγούμαι πᾶσιν εἶναι δῆλον ὅτι φεύγουσι μὲν οἱ περὶ αὐτῶν δεδιότες, διώκουσι δὲ οἱ βουλόμενοί τι ποιῆσαι κακόν. (§36)

violence. The apparent vividness or richness of Simon's characterization, however, is illusory. Even as jurors are privy to the speaker's internal life and learn lessons about Simon through juxtaposition and contrast, Simon's internal life is in fact inaccessible and inscrutable. The speech is almost systematically devoid of commentary on his motives, feelings and thoughts. The following sections of this chapter examine characterization in greater detail, exploring, first, how Simon and the speaker are characterized in relation to one another; second, how their characterization enables the speaker, in essence, to deny Simon an authentic, coherent internal life; and third, the rhetorical effects and purposes of that denial.

### **The *prooimion*: comparing Simon and the speaker**

As noted, the *prooimion*'s ostensible topic is the speaker's attitude toward the trial itself, and it unfolds through a series of statements about his emotions, but it is structured in such a way as to draw an implicit comparison between Simon and speaker. From one vantage point, the *prooimion* reveals them to be similar. Both have acted strangely in connection with the law: a guilty man has brought suit in a matter where he deserves conviction, and his victim shirked from pursuing the justice he deserved. Likewise, the trial threatens to lower the jury's esteem for both men: Simon's *tolma* in bringing suit surprises even someone familiar with his history of poor behavior; and in disclosing his affair with Theodotus, the speaker expects to incur the jury's disdain.<sup>21</sup> There is good reason for speaker to take this tack. As becomes clear over the course of the speech, neither man is entirely free from blame.<sup>22</sup> Both men having shown themselves to be public nuisances, it is in a way appropriate that the *prooimion* should encourage the jury to regard them both with a roughly similar disapproval.

The overall impression created by the *prooimion*, however, is not one of similarity. To the contrary, the first five chapters of the speech stresses difference, showing Simon a man of aggression and

---

<sup>21</sup> It is typical for a Lysianic *prooimion* to provide the jury with reason for disapproving of not only the opposing speaker but also the speaker himself. The *prooimion* of Lysias 3 is unusual in that the listener, in feeling disapproval toward the speaker and Simon, is expected to feel comparable disapproval toward both parties.

<sup>22</sup> The speaker later says that their dispute is of the kind that "all men come to regret when they regain their senses" (§43).

impulsiveness, and the speaker to be weak, passive and fearful. These characterizations are implicit even in the first sentence: Simon has attacked the speaker despite being in the wrong; and yet if Simon deserved to be prosecuted, the speaker should already have brought him to trial. So, too, the speaker calls attention to his lack of faith in his persuasive ability, his fear of the jury's disapproval, his weakness in the affair with Theodotus, and his inability to "endure misfortune discreetly." But if Simon and the speaker both deserve a certain disdain from the jury, the speaker is at least a sympathetic figure with whom the jury might identify, because he wishes to avoid conflict and to meet the community's standards of behavior. He values the jury's view of him, and wishes to comport himself in a *kosmios* fashion (§5). The jury, then, learns from the *prooimion* what drives the speaker and what sort of man he is. Simon, by contrast, is presented as a man whose actions have no rationale, no motive. Both men did wrong, but for different reasons: one as a result of inexplicable aggression, the other as a result of passivity and weakness.

### **The *diēgēsis*: comparison and substitution**

This sort of implicit comparison between Simon and the speaker is a prominent feature of the speech as a whole, not just the *prooimion*. The opening sentences of the *diēgēsis* in fact expand on the comparison drawn in the speech's first five chapters. As in the *prooimion*, that comparison appears subtextually, structuring a discussion on a superficially different issue. In admitting that both "desired" Theodotus (§5), the speaker again grants a certain similarity between himself and his opponent, a similarity that again serves to frame the extent of their differences: Simon the lover is aggressive, shameless; the speaker is gentle, passive. The speaker's again emphasizes his own thoughts and feelings, in particular his sensitivity to the Theodotus' wishes, just as he earlier emphasizes his sensitivity to the jury's views – a self-portrait with which, as before, the juror might sympathize. In turn, the listener may grasp Simon's erotic motive, but that window into Simon's inner life is instantly rendered opaque: just as one does not expect the guilty man to sue, one does not expect a man in love to use violence or force on his beloved. The juror can neither conceive of the mentality driving Simon nor identify with it. But even

if Simon's actions are inscrutable, they fit nicely into what the jury learned about him in the *prooimion*: Simon the lover, like Simon the prosecutor, is a man of unmotivated, unwarranted, inexplicable aggression.

The lover resembles the prosecutor also in that neither has any regard for the well-being of others, in strong contrast with the speaker, who frequently illustrates the value he places on relationships and his concern for the well-being of others: this quality of the speaker is seen even in his bafflement at Simon's prosecution, which shows a certain interest in his opponent's inner life. The same quality of concern for and sensitivity to others is evident in his gentle conduct towards Theodotus. But if mutual feeling, sympathy and concern for others are central to our understanding of the speaker, Simon's baffling behavior shows the complete lack of any such concern. Not only is it impossible for us to feel any sympathy with him, Simon falls so far outside the bounds of normal behavior in relationships that he actually corrupts the relationships of others and ruins the behavior of otherwise well-behaved men.

This helps to explain why Simon uses the same violence and compulsion in his romantic pursuits with Theodotus as he uses in bringing suit. Even in love, Simon behaves like a man driven by hostility. The roles as lover of Theodotus and prosecutor of the speaker can converge because the speaker has rendered Simon's internal life incoherent. Had the speaker drawn clearer demarcations between Simon's two roles – by acknowledging valid emotions or motives on the part of Simon – the speech could not convincingly make the substitutions described above, in which the speaker takes Theodotus' place as the target of Simon's attacks:

ὅσα μὲν οὖν ἐκεῖνος κακὰ ὑπ' αὐτοῦ πέπονθε, πολὺ ἂν ἔργον εἴη λέγειν· ὅσα δὲ εἰς ἐμὲ αὐτὸν ἐξημάρτηκεν, ἡγοῦμαι ταῦθ' ὑμῖν προσήκειν ἀκοῦσαι. (§5-6)

It would be a lengthy task to recount all the mistreatment which that person suffered at his hands, but I think you should learn the magnitude of the offences he committed against me personally. As written, the passage flows with a deceptive effortlessness unlikely to trouble the listener. That flow is broken and the awkward artificiality of the thought's progression becomes obvious, however, when its terms are spelled out clearly: "It would be a lengthy task to recount all of the harm Simon inflicted on the boy he desired, but I think you should hear how he hurt me because of his hatred for me." In the speech

as written, love becomes indistinguishable from hostility and prosecution from romantic pursuit. As a result of the failure – indeed the impossibility – of spelling out Simon’s intentions, the speaker can easily take Theodotus’ place.

Blurring the boundary between lawsuit and romance is only one of several strategies by which the speech denies Simon an authentic or coherent internal life. Another is repeated reference to his lack of remorse or his failure to show a change of heart when expected: thus Simon, after being thrown out of the speaker’s home, “so far from being ashamed of his outrageous conduct,” finds out where the speaker is eating and pursues him there (§7), an episode “unsurprising to anyone familiar with his insanity” (ibid.); Simon does not, as the speaker expects, lose interest in Theodotus during the boy’s absence (§10); Simon “takes no notice” when bystanders at the fuller’s shop express outrage at Theodotus’ treatment (§15); and Simon’s gang apologize to the speaker, modeling the remorse that, it is implied, he ought to feel (§19). Reference to Simon’s drunkenness (§6, 11, 18) similarly renders his internal life opaque and inscrutable, showing him to have a limited capacity for conscientious thought or feeling and thus a limited capacity for remorse: the speaker later says that the mayhem that broke out between himself and Simon is the sort that all men come to regret when they return to their senses (§43), but Simon clearly did not come to his senses, because he cannot. That lack of remorse is the natural corollary of his peculiarly opaque internal life: lacking any capacity for reasoning or feeling, he can have no awareness of or concern for the minds of others. This is why he is incapable of appropriate social behavior: only the man who possesses a sound mind can interact appropriately with other minds. And it is also why Simon is unable to feel the sting of disapproval: a man incapable of concern for others cannot perceive let alone be influenced by the people around him.

This inscrutability also explains why the speaker is never aware of Simon’s actions or plans until the moment of conflict. If Simon is effectively mindless, his behavior can have no rhyme or reason. He will bring unexpected suits, hold unexpected grudges, and make self-contradictory claims. But this same mindless inscrutability also explains why Simon, by contrast, always knows where the speaker is and why Simon is so adept at predicting his victim’s movements: our vivid sense of the speaker’s internal life



shows him to be restrained by fear and rendered helpless by his ignorance of Simon's movements and plans. Because Simon effectively has no mind or rational capacity, he faces no such emotional restraints or epistemological limitations. It is never explained how Simon knows where the speaker is when Simon fails to find him at home (§7), where Theodotus is staying when he returns with the speaker (§11) or how he tracks down Theodotus after the boy's initial escape from his captors. Nor can the speaker afford to explain. If he were to do so, Simon's internal life would be discerned more clearly. This would humanize him, vitiating the otherwise pure portrait of inscrutable aggression and raising questions about Simon's intentions and how he knows where to find the speaker. Paradoxically, then, by being rendered effectively mindless and unpredictable, Simon is mad canny and crafty. The speaker is unable to plan or account for his Simon's actions and so is necessarily innocent of *pronoia*; the charge thus redounds on Simon, who is shown to be a capable plotter.

### Characterization in the *Pisteis*

The speaker's *pisteis* draw on the characterizations developed in the narrative, stressing the speaker's weakness and vulnerability and Simon's aggressiveness and inscrutability. Bridging the *diēgēsis* and *pisteis*, the speaker notes that four years have passed since the events he just recounted, and that his loss in an *antidosis* suit led directly to Simon's bringing charges:

καὶ ἐξ ἐκείνου τοῦ χρόνου τεττάρων ἐτῶν παρεληλυθότων οὐδέν μοι πώποτε ἐνεκάλεσεν οὐδεὶς. Σίμων δ' οὐτοσί, ὁ πάντων τῶν κακῶν αἴτιος γενόμενος, τὸν μὲν ἄλλον χρόνον ἡσυχίαν ἤγε δεδιώς περὶ αὐτοῦ, ἐπειδὴ δὲ δίκας ἰδίας ἤσθετο κακῶς ἀγωνισάμενον ἐξ ἀντιδόσεως, καταφρονήσας μου οὐτωσὶ τολμηρῶς εἰς τοιοῦτον ἀγῶνά με κατέστησεν. (§19-20)

In the four years that have passed since then, at no time has anybody brought a prosecution against me. And Simon here, who was the cause of all these evils, kept the peace for a while because he was afraid on his own account. But when he learned I had come off badly in private cases arising from an *antidosis*, he grew so recklessly contemptuous of me that he forced me into the present suit.

The *antidosis*, whether or not it did lead so directly to Simon's suit, adds weight to the image that Simon presumably wishes to impress upon the jury, namely that the speaker is a powerful, wealthy individual guilty of harming his helpless socioeconomic inferior. The speaker uses the *antidosis* to show the opposite: Simon, ever the predator, pounces at the first sign of weakness; the speaker, still unable to

deflect his aggression, is forced into another conflict he would have preferred to avoid. As in the narrative, Simon is the aggressor and the speaker his powerless victim.<sup>23</sup>

Simon's inauthenticity and defective thinking are prominent in the arguments that follow:

ἐβουλόμην δ' ἄν, ὃ βουλή, Σίμωνά τὴν αὐτὴν γνώμην ἐμοὶ ἔχειν, ἴν' ἀμφοτέρων ἡμῶν ἀκούσαντες τάληθ' ῥαδίως ἔγνωτε τὰ δίκαια. ἐπειδὴ δὲ αὐτῷ οὐδὲν μέλει τῶν ὄρκων ὧν διωμόσατο, πειράσομαι καὶ περὶ ὧν οὗτος ἔψευσται διδάσκειν ὑμᾶς. (§21)

I would have wanted, members of the council, Simon to have the same attitude as me, so that you could easily have made a just decision after hearing both of us tell the truth. But because the *diomōsia* that he swore doesn't matter to him, I shall try to explain all the ways this man has lied.

Next the jury is told of the mathematical impossibility of Simon's contract with Theodotus, costing more than the worth of Simon's total estate:

Ἐτόλμησε γὰρ εἰπεῖν ὡς αὐτὸς μὲν τριακοσίας δραχμὰς ἔδωκε Θεοδότῳ, συνθήκας πρὸς αὐτὸν ποιησάμενος, ἐγὼ δ' ἐπιβουλεύσας ἀπέστησα αὐτοῦ τὸ μειράκιον. καίτοι ἐχρῆν αὐτόν, εἴπερ ἦν ταῦτ' ἀληθὴ, παρακαλέσαντα μάρτυρας ὡς πλείστους κατὰ τοὺς νόμους διαπράττεσθαι περὶ αὐτῶν. οὗτος δὲ τοιοῦτον οὐδὲν πώποτε φαίνεται ποιήσας, ὑβρίζων δὲ καὶ τύπτων ἅμ' ἀμφοτέρους ἡμᾶς καὶ κωμάζων καὶ τὰς θύρας ἐκβάλλων καὶ νύκτωρ εἰσιὼν ἐπὶ γυναῖκας ἐλευθέρας. ἂ χρὴ μάλιστα, ὃ βουλή, τεκμήρια νομίζειν ὅτι ψεύδεται πρὸς ὑμᾶς. σκέψασθε δὲ ὡς ἄπιστα εἶρηκε. τὴν γὰρ οὐσίαν τὴν ἑαυτοῦ ἄπασαν πεντήκοντα καὶ διακοσίων δραχμῶν ἐτιμήσατο. καίτοι θαυμαστὸν εἰ τὸν ἐταιρήσοντα πλειόνων ἐμισθώσατο ὧν αὐτὸς τυγχάνει κεκτημένος. (§21-2)

He had the audacity to say that he himself gave Theodotus 300 drachmas, that he made an agreement with him, and that I turned the young man against him by means of a plot. But if this were true, he ought to have called as many supporting witnesses as possible and dealt with the matter according to the laws. However, this man obviously did nothing of the sort, but rather committed hubris, beat up both of us, took part in a *kōmos*, battered down my doors, and entered by night into the presence of free-born women. You should especially regard all of this, members of the council, as evidence that he is lying to you. Consider how what he has said beggars belief: he valued his property in its entirety at 250 drachmas – but it would be astonishing if he had hired somebody to be his lover for more money than he actually possesses.

Simon is here being subjected to a kind of *antidosis* hearing of his own: his lies about his transactions and wealth show him to be guilty of precisely the sorts of false accounting of which the speaker had presumably been accused and perhaps found guilty. The speaker thereby displaces his own guilt onto Simon, showing the latter to be the man guilty of questionable accounting. Simultaneously, Simon's

---

<sup>23</sup> Only after the narrative does the speaker allude to his defeat in the *antidosis* suit. This is strategic positioning, one of the Lysianic hallmarks, and evidence of a delaying tactic, also a Lysianic hallmark: at this point in the speech the juror's notions of Simon and the speaker are sufficiently well-formed, and the speaker has so stressed his own weakness and straightforwardness, that the jury should be less likely than they were at the opening of the speech to hold against the speaker his loss in the *antidosis* suit, and more prepared to accept that Simon's contract is a fabrication.

violent conduct is adduced as proof of his mendacity; Simon's untrustworthiness and violence are intertwined.

The remainder of the speaker's arguments continue to stress the self-contradictoriness, impossibility and nonsensicalness of Simon's charges: Simon has incoherently claimed that the speaker both tried to defraud him of the original 300 drachmas and also repaid the sum, despite being under no court order to do so (§25); Simon also denies chasing Theodotus to the fuller's shop (§27), contradicting more than two hundred witnesses (*ibid.*); his audacity, accusing hundreds of people of lying, recalls the shamelessness and lack of remorse that he shows in the *diēgēsis*. The speaker even asks rhetorically:

ἀλλ' εἰς τοσοῦτον ἀμαθίας ἀφικόμην, ὥστε ἐπιβουλεύων Σίμωνι οὐκ ἐτήρησα αὐτὸν οὐδ' ὅτι μόνον οἶόν τ' ἦν λαβεῖν, ἢ νύκτωρ ἢ μεθ' ἡμέραν, ἀλλ' ἐνταῦθα ἦλθον οὐδ' αὐτὸς ἔμελλον ὑπὸ πλείστον ὀφθήσεσθαι τε καὶ συγκοπήσεσθαι, ὥσπερ κατ' ἐμᾶντοῦ τὴν πρόνοιαν ἐξευρίσκων, ἵν' ὥς μάλιστα ὑπὸ τῶν ἐχθρῶν ὑβρισθείην; (§34)

But had I reached such a level of stupidity that while plotting against Simon [as Simon claims] I did not keep a look-out for him where he could be found alone, night or day, but instead went where I myself could expect to be seen by a great people and beaten up – as if it was against myself that I was devising premeditation, so as to suffer as much hubris as possible at the hands of my enemies? Simon's charges, then, are not merely implausible but show a gross misunderstanding of the speaker's thinking. Simon's defective thinking reveals itself yet again in his inability to grasp the workings of other minds.

The proofs mirror and build on the *diēgēsis* also by repeatedly displacing Theodotus, making the speaker Simon's target:

ἀλλὰ καταλαβόντες τὸ μειράκιον ἐκ τῆς ὁδοῦ ἤγον βία, ἐντυχὼν δ' ἐγὼ τούτων μὲν οὐχ ἡπτόμην, τοῦ μειρακίου δ' ἐπελαμβανόμεν· οὗτοι δὲ ἐκείνόν τε ἤγον βία καὶ ἐμὲ ἔτυπτον. καὶ ταῦθ' ὑμῖν ὑπὸ τῶν παραγενομένων μεμαρτύρηται. ὥστε δεινὸν εἰ περὶ τούτων ἐγὼ δόξω προνοηθῆναι, περὶ ὧν οὗτοι τυγχάνουσιν οὕτω δεινὰ καὶ παράνομα πεποιηκότες. τί δ' ἂν ποτε ἔπαθον, εἰ τάναντία τῶν νῦν γεγενημένων ἦν, εἰ πολλοὺς ἔχων τῶν ἐπιτηδείων ἐγώ, ἀπαντήσας Σίμωνι, ἐμαχόμεν αὐτῷ καὶ ἔτυπτον αὐτὸν καὶ ἐδίωκον καὶ καταλαβὼν ἄγειν βία ἐζήτουν, ὅπου νῦν τούτου ταῦτα πεποιηκότος ἐγὼ εἰς τοιοῦτον ἀγῶνα κατέστηκα, ἐν ᾧ καὶ περὶ τῆς πατρίδος καὶ τῆς οὐσίας τῆς ἐμᾶντοῦ ἀπάσης κινδυνεύω; (§38-9)

Instead, they caught hold of the young man and began trying to drag him forcibly out of the road. And when I happened to meet them, it was not them I touched, but I simply grabbed hold of the young man. They kept dragging him off by force and were beating me up. This has been testified to you by those who were present. So it will be terrible if I am held guilty of premeditation in this affair, in which these men behaved in such a terrible, lawless fashion. What would have been my fate if the opposite of what happened had taken place? What if I, together with many of my friends, had met Simon, and started a fight and beat him up and chased after him and caught him and tried to drag him off by force – given that now,

when this man has behaved like this, I am the one who is now facing this trial, in which I am in danger of losing my fatherland and all of my property?  
 When the speaker imagines “the opposite” scenario (τί δ' ἂν ποτε ἔπαθον, εἰ τάναντία τῶν νῦν γεγεννημένων ἦν), he imagines himself in the role of Simon but Simon suffering the indignities that both Theodotus and the speaker suffered (εἰ πολλοὺς ἔχων τῶν ἐπιτηδείων ἐγὼ, ἀπαντήσας Σίμωνι, ἐμαχόμεν αὐτῷ καὶ ἔτυπτον αὐτὸν καὶ ἐδίωκον καὶ καταλαβὼν ἄγειν βίᾳ ἐζήτουν). When the line of thought returns from hypotheticals to reality (ὅπου νῦν τούτου ταῦτα πεποιηκότος ἐγὼ εἰς τοιοῦτον ἀγῶνα κατέστηκα), Theodotus has vanished, and Simon and the speaker implicitly trade places again; the speaker stops short of saying or implying, “I was the one you beat up and dragged off and I alone am the victim”<sup>24</sup> but his thinking inclines in that direction, as Theodotus disappears and the speaker becomes Simon’s target. The speaker’s next step, almost a logical outgrowth of his displacing Theodotus in this fashion, is to deny that Simon had any true interest in the boy:

τὸ δὲ μέγιστον καὶ περιφανέστατον πάντων· ὁ γὰρ ἀδικηθεὶς καὶ ἐπιβουλευθεὶς ὑπ' ἐμοῦ, ὥς φησιν, οὐκ ἐτόλμησε τεττάρων ἐτῶν ἐπισκήψασθαι εἰς ὑμᾶς. καὶ οἱ μὲν ἄλλοι, ὅταν ἐρῶσι καὶ ἀποστερῶνται ὧν ἐπιθυμοῦσι καὶ συγκοπῶσιν, ὀργιζόμενοι παραχρῆμα τιμωρεῖσθαι ζητοῦσιν, οὗτος δὲ χρόνους ὕστερον. (§39)

And here is the strongest and clearest proof of all [that Simon is lying]: this man (or so he claims) has been wronged by me and has been the victim of my plotting, but he did not have the audacity to bring an *episkēpsis* before you for four years. When other people are in love, and are deprived of what they desire and suffer violence, they immediately seek to be avenged while they are furious. This man does it ages later.

With the speaker having taken Theodotus’ place, it naturally follows that the boy was never Simon’s target; erotic rivalry was not and is not Simon’s motive; his entire narrative is a fabrication; and thus his suit is without merit.

The chapters that follow, starting at §40, are the speech’s second discussion of the law on *trauma ek pronoias*. The first, §27-36, disputes Simon’s account and argues for the speaker’s innocence of the charge. At §40, the speaker approaches the law from a different standpoint, explaining to the jury why he himself never prosecuted Simon for *trauma ek pronoias*:

<sup>24</sup> The speaker does, however, say precisely this at §46: “These are men who enter our homes by force, who chase us, and who drag us off the street by force” (οὗτοί εἰσιν οἱ βίᾳ εἰς τὴν ἡμετέραν οἰκίαν εἰσιόντες, οὗτοι οἱ διώκοντες, οὗτοι οἱ βίᾳ ἐκ τῆς ὁδοῦ συναρπάζοντες ἡμᾶς).

Ὅτι μὲν οὖν, ὃ βουλή, οὐδενὸς αἰτιὸς εἰμι τῶν γεγενημένων, ἱκανῶς ἀποδεδείχθαι νομίζω· οὕτω δὲ διάκειμαι πρὸς τὰς ἐκ τῶν τοιούτων πραγμάτων διαφοράς, ὥστε καὶ ἄλλα πολλὰ ὑβρισμένος ὑπὸ Σίμωνος καὶ καταγείς τὴν κεφαλὴν ὑπ' αὐτοῦ οὐκ ἐτόλμησα αὐτῷ ἐπισκήψασθαι, ἡγούμενος δεινὸν εἶναι, εἰ ἄρα περὶ παιδῶν ἐφιλονικήσαμεν ἡμεῖς πρὸς ἀλλήλους, τούτου ἔνεκα ἐξελάσαι τινὰς ζητῆσαι ἐκ τῆς πατρίδος. ἔπειτα δὲ καὶ οὐδεμίαν ἡγούμεν πρόνοιαν εἶναι τραύματος ὅστις μὴ ἀποκτεῖναι βουλόμενος ἔτρωσε. (§40-1)

That I wasn't, then, responsible for any of what has happened, members of the council, has been adequately demonstrated, I think. Such is my attitude towards disagreements stemming from these sorts of matters that, despite having suffered numerous other instances of *hybris* from Simon, and despite having gotten my head broken by him, I didn't have the audacity to bring an *episkēpsis*, because I thought it shameful – even if we had fought with one another in a quarrel over boys – for that reason to throw people out of their fatherland. And I thought there to be no premeditation in wounding if someone wounded without intend to kill.

Carey and Todd both read the passage as if it pertains to the suit Simon brought and is intended to show that Simon's prosecution is a misapplication of the law. That reading is based partly on misconstrual of a key clause: εἰ ἄρα περὶ παιδῶν ἐφιλονικήσαμεν ἡμεῖς πρὸς ἀλλήλους, which Todd translates "because we perhaps quarreled with one another over boys." εἰ ἄρα with the aorist indicative, however, does not mean "because... perhaps." εἰ ἄρα is "commonly used of that which is improbable or undesirable" (Smyth §2796), and "is often used, especially with ὥς, to introduce the statement of others which, in the view of the speaker, is (usually) to be rejected" (ibid.).

In reported speech, and after verbs of thinking and seeming, ἄρα denotes the apprehension of an idea not before envisaged. Usually ἄρα conveys either, at the most, actual skepticism, or, at the least, the disclaiming of responsibility for the accuracy of the statement. But sometimes the context implies acceptance of the idea, and ἄρα merely denotes that its truth has not before been realized. (Denniston 1954, 38)

The context of the construction in Lysias 3 does not imply acceptance of a truth newly realized. It shows, rather, that the speaker is skeptical of the content of the clause and disclaims responsibility for the accuracy of the statement. The speaker, just moments earlier, told the jury that if Simon really were the bereft lover he claims to be he would have brought suit sooner; Simon's story of romantic rivalry is unequivocal hogwash. εἰ ἄρα signals that the contents of the clause, which after all are grammatically contrafactual, are a concession for the sake of argument: given what actually happened, i.e. given the speaker's true account of the facts, it would be excessive to bring suit; but exile is so obviously excessive a punishment that it would be so even if (εἰ ἄρα) Simon's account of their dispute as a romantic rivalry were true – but it is not. What Todd and Carey take to be the speaker's central concern – to show

Simon's suit to be procedurally inappropriate – is at best an afterthought. Simon's charges have already been shown false, his suit illegitimate, and so there is no reason here for the speaker to try to prove, as he has already proven it, that the procedure is appropriate. Todd and Carey correctly note that from §41 to §43 the speaker distributes blame rather evenly between himself and his opponent, but this is done *not* in the context not of Simon's suit, which is based on lies; it is done in the context of the hypothetical lawsuit, based on facts, that the speaker chose not to bring. The line of argument ends at §43 much as it began:

καὶ γὰρ δεινὸν ἂν εἴη, εἰ ὅσοι ἐκ μέθης καὶ φιλονικίας ἢ ἐκ παιδιῶν ἢ ἐκ λοιδορίας ἢ περὶ ἐταίρας  
μαχόμενοι ἔλκος ἔλαβον, εἰ ὑπὲρ τούτων ὦν, ἐπειδὴν βέλτιον φρονήσωσιν, ἅπανσι μεταμέλει, οὕτως [καὶ]  
ὕμεῖς μεγάλας καὶ δεινὰς τὰς τιμωρίας ποιήσεσθε, ὥστε ἐξελαύνειν τινὰς τῶν πολιτῶν ἐκ τῆς πατρίδος.  
(§43)

So it would be a terrible thing if, when people are wounded while fighting because of drunkenness or quarrelling of horseplay or insults or over a *hetaira* (these are the sorts of things about which everybody is sorry when they recover their senses), you were to impose such severe and terrible penalties that you expelled some of the citizens from the fatherland.

Whether the jury accepts the speaker's true account or Simon's false one, their quarrel is too frivolous for to impose exile as punishment.

### Denying Simon's authenticity

It is hardly clear, however, that the speaker actually does consider Simon a frivolous, harmless troublemaker:

θαυμάζω δὲ<sup>25</sup> μάλιστα τούτου τῆς διανοίας. οὐ γὰρ τοῦ αὐτοῦ μοι δοκεῖ εἶναι ἐρᾶν τε καὶ συκοφαντεῖν,  
ἀλλὰ τὸ μὲν τῶν εὐηθεστέρων, τὸ δὲ τῶν πανουργοτάτων. ἐβουλόμην δ' ἂν ἐξεῖναι μοι παρ' ὑμῖν καὶ ἐκ τῶν  
ἄλλων ἐπιδείξαι τὴν τούτου πονηρίαν, ἵνα ἐπίστησθε ὅτι πολὺ ἂν δικαιότερον αὐτὸς περὶ θανάτου  
ἠγωνίζετο ἢ ἐτέρους ὑπὲρ τῆς πατρίδος εἰς κίνδυνον καθίστη. (§44)

But I wonder at what drives this man. Being a lover and being a sycophant do not seem to me to be compatible: one is characteristic of rather simple, guileless people; the other, of the worst sort of knave. I would have liked to have been allowed to show you his wickedness from other evidence, too. That way, you would realize that it would be far more just for him to be on trial for his life than for him to put other people in danger of exile.

---

<sup>25</sup> The δὲ suggests that the passage should be read in contrast to the previously quoted passage: “what happened is a small matter unworthy of the courts, and so is romantic rivalry (i.e. Simon's lies), but (δὲ) Simon does not seem to be a lover (ἐρᾶν).”

Having just learned that neither the speaker nor Simon deserves to be exiled for the brawl, the jury is now informed that Simon deserves a capital trial for other offenses. The sudden turn from lightheartedness to severity is awkward but, with a view to the overarching rhetorical strategy, appropriate.

There are only two passages in the speech where the speaker openly reflects on his understanding of Simon as a person:

Πολλὰ καὶ δεινὰ συνειδὼς Σίμωνι, ὃ βουλή, οὐκ ἂν ποτ' αὐτὸν εἰς τοσοῦτον τόλμης ἡγησάμην ἀφικέσθαι, ὥστε ὑπὲρ ὧν αὐτὸν ἔδει δοῦναι δίκην, ὑπὲρ τούτων ὡς ἀδικούμενον ἐγκλημα ποιήσασθαι καὶ οὕτω μέγαν καὶ σεμνὸν ὄρκον διομοσάμενον εἰς ὑμᾶς ἐλθεῖν. (§1)

Even though I already know many terrible things about Simon, members of the council, I never would have expected him to reach such a level of audacity as to bring charges as victim in a matter in which he deserves punishment, or that he would swear so great and solemn an oath and come before you.

===

Θαυμάζω δὲ μάλιστα τούτου τῆς διανοίας. οὐ γὰρ τοῦ αὐτοῦ μοι δοκεῖ εἶναι ἐρᾶν τε καὶ συκοφαντεῖν, ἀλλὰ τὸ μὲν τῶν εὐηθεστέρων, τὸ δὲ τῶν πανουργοτάτων. (§44)

But I wonder at what drives this man. Being a lover and being a sycophant do not seem to me to be compatible: one is characteristic of rather simple, guileless people; the other, of the worst sort of knave. The speaker's professed surprise in the first passage is unlikely to attract the interest of listeners familiar with the conventions of forensic oratory, because defense speeches routinely open with complaints about the prosecution's unmotivated, unjust, malicious attacks. The opening of Lysias 3, however, adapts that convention to the specific needs of its speaker, introducing his speech's central rhetorical themes: first that Simon is the aggressor, not the victim, an idea openly stated and stressed throughout the speech; second that Simon is incomprehensible. This latter theme – which develops more subtly, even subtextually, through illustration rather than explanation – is the one that comes to fulfillment at the opening of §44. There, for the first time, the speaker openly expresses the thought that he has been developing since the speech's opening words: not just that Simon's actions make no sense, or that his actions contradict his professed intentions, or that he is a liar, but rather that, on the basis of all of this, that the man himself is beyond understanding. The opening of §44 thus represents the fulfillment of a central goal of the rhetorical strategy: a *reductio ad absurdum* of Simon's suit through a *reductio* of the man himself.

### Conclusion: Reversals and Lysianic Hallmarks in Lysias 3

The dissertation is a study of what I am calling Lysianic rhetorical hallmarks. One of these is the willingness of a Lysianic speaker to reverse and contradict himself, with the result that comparison of the opening of a speech is compared to its close often reveals changes of subject, redefinition of terms, and reversals of attitude. These changes, I argue, are key to the overarching rhetorical strategy, in that Lysias' speakers, in changing their minds on certain matters, are modeling the psychological process that they are attempting to induce in listeners. The opening of a Lysianic speech thus tends to open in a cowed tone, and often encourages jurors to feel disdain for the speaker, in order to fit the speaker to the mentality that he expects to encounter in the courtroom – i.e. to the mentality of the juror willing to be, but not yet, won over and who therefore has doubts about the man addressing him. As a speech unfolds, the rhetorical effects of the speech are fed back into it: as the mentality of the juror changes, so does the speaker's, and so his handling of his material changes as well. Outright self-contradiction is not always the result, but even when the handling of facts is consistent, the speaker's attitude often develops in surprising ways.

I have already mentioned one example of this hallmark in Lysias 3: the speaker is at first willing to grant, but later denies, that Simon was romantically interested in Theodotus. That reversal is one element of the larger reversal, in which *eros* and the love triangle are central to the opening of the speech but absent from its conclusion. At the end of the speech, the issue on which the jury is to see frivolity and conduct deserving disapproval is not, as it was at the opening of the speech, the speaker's handling of his affair with Theodotus. Embarrassment has shifted to the brawl that erupted between the speaker and Simon.<sup>26</sup> The speaker no longer apologizes for his romantic conduct or his affair – nor does he even mention it. He still admits to a certain culpability, to the extent that he was involved in a frivolous brawl, but he treats the affair a matter beneath the consideration of the law. Moreover, no longer fearful of the jury's disapproval, he in fact demands their gratitude for his past services to the city (§47).

---

<sup>26</sup> Even toward the opening of the speech the speaker's claim that he feels the embarrassment (§3) is seen to be disingenuous: it strikes me as implausible that the speechwriter truly expected the juror to disapprove of his client's gentle, caring treatment of Theodotus, especially after contrasting it with Simon's violent lawlessness (§5).



This change in the speaker's handling of love and the love triangle goes hand in hand with a change in his approach to the formal charges. The speaker's confession, in the *prooimion*, to romantic or sexual misbehavior in his affair with Theodotus diverts the jury's attention from the wrong of which he stands accused to a wrong that is, strictly speaking, irrelevant: whether he acted in a dignified way towards Theodotus has no bearing on whether he is guilty of injury with premeditation. The opening of the speech, that is, focuses on erotic desire so as to avoid discussion of the formal charges; only after the narrative does the speaker directly address them. When he does so, his attitude towards the affair, and his account of it, are found to have changed. At the opening, love and desire are the things of which he is guilty: the speaker makes vivid his overwhelming desire for Theodotus, which he blames (along with Simon) for his bad behavior. At the end of the speech, love and desire, far from causes of guilt, are proof of both the speaker's innocence (the speaker's actions in his brawl with Simon were intended to rescue the boy, not injure a rival) and Simon's culpability (Simon never had any feelings for Theodotus; what drove him was aggression towards the speaker, not love for Theodotus).

One can thus map the rhetorical development of the speech in a series of stages. In the first stage, the speaker allows that both he and Simon desired Theodotus, but he sows seeds of doubt: Simon's apparent hostility to the speaker is foregrounded (i.e., "I think you should hear about the magnitude of the wrongs he committed against me"), and there is no further admission of Simon's feelings for the boy. In the second stage, the speaker repeatedly shifts Simon's attention from Theodotus to himself, implanting the idea that the boy was not in fact Simon's target. In the third stage, immediately after the *diēgēsis*, the speaker continues to accept – or at the very least does not contradict – that Simon desired the boy. But he simultaneously he denies the existence of a formal agreement. In the fourth stage, Simon's credibility is called into question on the basis of his lying about the contract, and also on the basis of his outrageous conduct towards the speaker and his patently false charges. This enables the speaker, in the final stage, to deny the credibility even of Simon's desire for Theodotus and then, at the opening of §44, to call into question whether Simon is even the man he claims to be – and whether he makes any sense at all as anything other than a sycophant. Only at the end of the speech does the speaker openly assert that Simon

is an inauthentic, inscrutable sycophant, but the speech has been preparing for that moment. The speaker's goal, latent even in his opening remarks, has been to convince the jury to see the dispute not in terms of contractual rights or erotic desire but in terms of the prosecutor's malicious, unwarranted hostility towards the defendant.

It is thus no surprise that the speaker at the end of the speech shows no concern with the love affair and dismisses it as irrelevant (and dismisses Simon's feelings as inauthentic). The speaker's plan from the very beginning was to accept temporarily that romantic rivalry was the root of their quarrel, but simultaneously to prepare the listener to accept, when he finally asserts it, that he was Simon's true target. Nor is it any surprise that the speaker's tone should change: the speaker feigns embarrassment and shame in the opening chapters and in the narrative only because he has – at that point in the speech – no choice but to accept Simon's characterization of their dispute, in which the speaker has indeed acted outrageously as a result of his desire for the boy. At the end of the speech, though, the rhetorical environment has changed, and the speaker, freed from Simon's charges, no longer has reason to feel shame.

## **Chapter 4: Lysias 7, “Concerning the *Sēkos*”**

*Full Disclosure: Class Tensions and the Thirty in Lysias 7*

## Introduction

The unnamed speaker of Lysias 7 is on trial for the alleged removal of a *sēkos*,<sup>1</sup> the stump of a sacred olive tree (*moria*), from one of his tracts of agricultural land during the archonship of Souniades (§11), 397/6.<sup>2</sup> The formal charge that he faces is impiety, *asebeia*; this is signaled by the fact that the suit is tried in the Court of the Areopagus before the *boulē*, which heard *graphai asebeias*. The word and charge, however, appear nowhere in the speech. The laws more relevant to our understanding of the trial are those regulating care of olive trees on private land: landowners were permitted to fell just two non-sacred olives (*elaiai idiai*) per year (Carey 1989, 114, citing *Dem.* 43.17) and were strictly prohibited from any tampering with *moriai*. The city conducted monthly and annual inspections of *moriai* on private land (§25).<sup>3</sup> If a landowner was found to have molested or damaged one, or infringed on its sacred space, the city could levy fines or try the violation as a capital offense (Arist., *Ath. Pol.*, 60); the speaker of Lysias seems to believe he faces confiscation and exile (§3). No laws survive concerning oversight or care of a *sēkos* but one can probably assume that the same laws governed these as governed care of *moriai*, as the speaker of Lysias 7 discusses the two interchangeably.

The prosecutor, a certain Nicomachus who is otherwise unknown, has charged that the speaker, in broad daylight (§15) with his own slaves and an oxcart and driver (§19), had the *sēkos* removed and wheeled away (*ibid.*). Nicomachus has offered no physical evidence, no documentary evidence, nor a single witness, and sufficient time has passed since the alleged crime that the speaker faults his delay before bringing charges (§18). Towards the end of Lysias 7 the speaker thus treats the suit as a farce, a

---

<sup>1</sup> The meaning of this term has eluded ancient and modern readers (Todd 2007, 483). Some interpret it etymologically as designating an enclosure, possibly a fence that marked off the sacred area of the *moria*. Others, myself included, read it as referring to the stump of a *moria*. Lysias 7 gives good reason for favoring the latter interpretation. The word *ektemnō* (§19) and *exoruttō* (§26), used of its removal, better describe the uprooting of a stump than that of a fence. Moreover, at no time does the speaker tie the *sēkos* to anything other than olive trees: he defends himself against the charge that he had mistreated a single *sēkos* by adverting to his good stewardship of the many *moria* on his land; and the tenant-farmers who worked the land found “neither private olive nor *moria* nor *sēkos*” (οὔτε ἰδίαν ἐλάαν οὔτε μορίαν οὔτε σηκὸν παραλαβόν, §10) – that is, no form of olive tree whatsoever, be it a private olive, a sacred olive, or the stump of one.

<sup>2</sup> On the dating of whose archonship see Carey (1989) 114.

<sup>3</sup> Discussed by Carey (1989) 114.

pristine example of prosecutorial incompetence, and the prosecution's case does seem quite thin, but the speaker's pose of blitheness is belied by the vigor of the speech itself. The speaker claims in his opening remarks that his task as defendant is simply to show that there was no *sēkos* on the land when he acquired it (§5), and that task is already complete at the start of §11; he then goes on to defend himself from a host of other angles: the crime may indeed have taken place, but he himself cannot have been responsible for it; many sacred and private olives disappeared in the course of the Peloponnesian War, and such a fate could easily have befallen this one (§6ff), if there was one; because such disappearances happened only during the war, and because the speaker obtained the land after there was peace, he cannot be held responsible. The speaker also argues, in §12-29, that even if there had been a *sēkos* for him to remove and even if he had had the opportunity to remove it, the crime would have made no sense: he would have gained nothing by it (§12ff), since the presence of the *sēkos* cost him little. And if he nevertheless insisted on its removal, the crime would immediately have been detected and punished, so that only a madman intent on self-destruction would make the attempt.

The speech, then, does not merely answer the charges that it attributes to Nicomachus. It answers numerous other charges, and address a variety of hypotheticals and contrafactuals as well. This is in a way unsurprising, even conventional. Much Classical Attic forensic oratory argues by way of this sort of logical exhaustion,<sup>4</sup> and speakers often address a wider range of topics than promised by their opening remarks. This tendency is in part attributable to the rhetorically permissive and jurisprudentially loose environment of the Athenian law courts (see page 41). Within that environment, though, speeches rarely lose focus or veer off topic (Lanni 2005).<sup>5</sup> Lysias 7 is remarkable not so much in trying to accomplish more, rhetorically, than it promises; it's remarkable because so few speeches attempt to control the juror's thinking on such a wide range of social, political and historical issues – e.g. the history of the land in question and how it came into the speaker's possession; the costs of Spartan incursions

---

<sup>4</sup> What I call logical exhaustion Wohl's describes as unsound "kettle logic." On my doubts concerning Wohl's characterization of logic's use, or misuse, in the orators, see page 12.

<sup>5</sup> On methods of attack and insult see Voegelin (1943).

during the Peloponnesian War; the liberating effect of the Thirty's reign on criminally minded Athenians; the effectiveness of the Areopagus in observing and punishing criminals; the speaker's poor reputation in the city; his neighbors' hostility towards him; and his slaves' willingness to inform against him.<sup>6</sup>

That breadth may be owed partly to the challenges that the accusation itself presents. The prosecution lacks evidence, but in a way the defense does as well: the speaker must somehow make the absence of the *sēkos* proof of innocence, even as Nicomachus simultaneously presents that same absence as evidence of guilt.<sup>7</sup> Lysias 7's unusual wealth of argument may partly be an attempt to compensate for the difficulty of proof. But that difficulty is itself an important signpost. Commentators have noted the problem of the speech's length (Todd 2007, 487-8; Carey 1989, 116-7) and tied it to the trial's political background, specifically the fact that the Thirty were apparently in power when the speaker acquired the land (§9): "This may be a powerful man, but with a tainted record under the oligarchy and with powerful enemies who reckon that they can damage him" (Todd 2007, 488). The idea is attractive, but without additional historical evidence (and we do not know whether the speech was delivered or even written for an actual lawsuit), it cannot be developed or pursued. Attempts to reconstruct a historical suit on the basis of a surviving forensic speech are on no surer footing than attempts to reconstruct Pericles' imperial policies on the basis of a Thucydidean speech. Thucydides' speeches reveal the thinking of the author, not of historical actors. But even if Lysias 7's relationship to actual litigation is equally uncertain, the speech is also equally revealing of its author's understanding of the scenario with which he is grappling. I would therefore reformulate Todd's historical suggestion in rhetorical terms: regardless of whether the speaker truly has any oligarchic past to answer for, and regardless of whether the prosecution is attacking him on that pretext, Lysias 7 is indeed a speech written for a man whose background raises troubling questions about his history with oligarchy. The suit is proximately and ostensibly concerned with the

---

<sup>6</sup> Consideration of these hypotheticals so dominates the speech that the speechwriter alters the usual four-part structure (*prooimion*, *diēgēsis*, *pisteis*, *epilogos*): the speech has no *diēgēsis*; in its place is a sequence of hypothetical and counterfactual anecdotes and discussions of Athenian history.

<sup>7</sup> The speaker alludes to this very difficulty at §2.

speaker's innocence on the charge of *sēkos* removal, but its structure and content hints that its deeper purpose is to clear the speaker of blame in connection with the Thirty, and thereby to prove him a true democrat and friend of the democracy.

As in Lysias 1, 3 and 10, the evidence for this deeper purpose is seen in the structure of the speech and the ways in which certain elements of the speaker's argument and mode of self-presentation evolve. The speaker initially takes a cowed, fearful posture, assuring the audience in various ways of his powerlessness, weakness, vulnerability and reverence for the democracy; he presents himself as having lived the sort of quiet apolitical life that should have protected him from attacks by people like Nicomachus. Later, however, he tells the jury that Nicomachus' attack was, in a way, to be expected, because the speaker too ostentatiously displayed his wealth by proudly pouring his resources into liturgies. Likewise, the speaker seems at first to take for granted that the crime imputed to him was an impossibility; but toward the end of the speech he claims, essentially, that the only thing stopping people like him from removing a *sēkos* under the Thirty was the oversight of the council of the Areopagus itself. As the speech develops, the speaker redefines himself: he is at first a private figure, but becomes a public one, calling attention to his services to the city and his democratic credentials. The arguments he makes for his innocence on the charge of *sēkos* removal move in parallel: his innocence is first argued on essentially apolitical grounds; by the end of the speech, though, the speaker seems to be drawing on his bona fides as a supporter of the democracy to argue for his innocence. At the end of the speech, moreover, the speaker is arguing for a different, broader sort of innocence than the one his case requires him to establish: when the speaker is in the process of rounding off his proofs (§30-1), the crime of which he claims innocence is not the crime of which he is accused, namely *sēkos* removal during the archonship of Souniades; it is innocence of *sēkos* removal, and any other crime, when the Thirty were in power. Proving the absence of the *sēkos* from the speaker's land, then, is hardly the extent of the defense's task, despite the speaker's claims to the contrary; it is only the first step in a larger string of proofs that serve a different, but related, rhetorical goal: establishing the speaker's innocence on the charge of removing the

*sēkos* during the Archonship of Souniades is instrumental to the end of proving that he is innocent of any crime connected to oligarchy, i.e. of crimes for which he is not ostensibly on trial.

## Context

The speaker of Lysias 3 faults Simon, the man prosecuting him, for a four-year delay between alleged crime and the filing of charges (3.19ff). We might then suppose, with Carey (1989, 114), that Nicomachus tarried for at least a year or two after the alleged removal of the *sēkos*, putting the trial somewhere in the latter half of the 390's, approximately a decade after the restoration of the democracy. During this period, despite the general amnesty, suits were brought against the Thirty and their perceived or accused collaborators.<sup>8</sup> How routine they were is unknowable,<sup>9</sup> and the Lysianic corpus is likely biased to overstate their prevalence: Lysias' clientele were probably among the wealthier and better connected of Athenians, who likely sought the logographer's services for suits of especial difficulty or danger; wealth alone made them more susceptible to charges of oligarchic sympathy and so to suits arising therefrom;<sup>10</sup> and such suits were probably among the more dangerous and difficult that a wealthy litigant could face. Textual transmission, moreover, probably favored the survival of speeches of particular historical interest. We should be careful, therefore, not to make too much of the fact that fully ten percent of the Lysianic speeches (four of the thirty-four complete or mostly complete orations) were written for legal actions rooted in crimes tied to the Thirty, or that a third of the speeches mention the Thirty.<sup>11</sup> We should be wary also of the speaker of Lysias 10, who treats bringing suit against the Thirty

---

<sup>8</sup> For a more general discussion of these suits, see Carawan (2006).

<sup>9</sup> Aristotle (*Ath. Pol.*, 34) tells us that the one man, unnamed, who was unwise or unfortunate enough to challenge the amnesty and illegally bring suit against another citizen in connection with this behavior under the Thirty was put to death for doing so. Aristotle presents this as the one and only occasion on which the amnesty was violated.

<sup>10</sup> This need not mean that the legal basis for the suit would be crimes committed in connection with the Thirty. The crime charged could, as in the prosecution against Socrates, be ostensibly unrelated to its political background.

<sup>11</sup> Lysias 6, 7, 10, 12, 13, 14, 16, 18, 24, 25, 26, 31



as a mark of distinction for those injured by them (10.31).<sup>12</sup> And we should try not to make too much of the fact that the two longest forensic speeches in the Lysianic corpus concern allegations of wrongdoing by one of the Thirty (Lysias 12) and one of their informers (Lysias 13). At the same time, though, the speeches attributed to Lysias unequivocally show that such legal actions did find their way into the courts and the Assembly.<sup>13</sup> Thus the speaker of Lysias 26 challenged the suitability of a certain Euandrus for the office of Archon, alleging that he paved the way for the overthrow of the democracy before the Thirty (26.9) and then engaged in a diversity of crimes when they were in power (26.10). Inscriptional records show that Euandrus passed his review and held his archonship in 382/1.<sup>14</sup> If the Assembly heard the speech that we possess, or some version of it, we must conclude that allegations of ties to the Thirty were not persuasive or sufficiently damning in this particular instance. But the speech nevertheless reveals the speechwriter's sense of the rhetorical and legal environment of Athens during this period, his sense of the city's persisting hostility towards those with perceived ties to the Thirty, his supposition that such hostilities could expect to be given an audience in the courts despite the amnesty, and his corresponding belief that, even two decades after the restoration, accusations of ties to the Thirty still had rhetorical potency.

We know not even the name of the speaker of Lysias 7, and so our knowledge of his political career and the trial's connection to his personal and political background is limited to what little he tells us – almost none of which merits trust. His claim to have led a quiet (apolitical) life (§1) would be unsupportable if he were publicly prominent or politically active, but the claim is here certainly a pose intended to throw the unwarranted aggression of his opponent into sharper relief (§2-3); it also

---

<sup>12</sup> The suit for which Lysias 10 was written is firmly datable to 384/3 – at 10.4 the speaker mentions that twenty years have passed since the counter-revolution – showing that, even two decades after the restoration, a litigant might expect strategic mention of the Thirty to win him jury's pity and favor.

<sup>13</sup> The *dokimasia* was a judicial review of a citizen's eligibility or suitability for office, benefits, cavalry service, and right to address the assembly. *Dokimasiai* were automatic for *archons* and members of the *boulē* before they took office, but in other contexts were called only when a challenge had been raised, such as in the case of Lysias 25, in which the speaker has been called to court to justify and prove the necessity of the disability benefits he receives. On the procedure see Todd 1993, 115-6, 286-8.

<sup>14</sup> On the political background of Lysias 26, see Todd 1993, 285ff.

contradicts some of what the speaker later tells the jury later about himself and his contributions to the city.<sup>15</sup> Nor do we learn anything about the speaker's political affinities from his complaint that "I am sure you realize that Nicomachus is undertaking this prosecution because he has been persuaded by my enemies" (ἐγὼ μὲν γὰρ ἐγνώκειναι ὑμᾶς ἡγοῦμαι ὅτι Νικόμαχος ὑπὸ τῶν ἐχθρῶν πεισθεὶς τῶν ἐμῶν τοῦτον τὸν ἁγῶνα ἀγωνίζεται, §39). Classical Attic oratory is replete with defendants alleging that their prosecutors are the agents of faceless, nameless enemies. The use of that trope here tells us only that the speechwriter expected the jury to find the idea not entirely implausible.<sup>16</sup>

More instructive for our understanding of the political background of the suit is the fact that Classical Athenian trials on religious charges frequently had a political dimension (Parker 1996, 199-202). This grouping of suits includes some of the most famous trials from Classical Attic history, such as the accusations against Pericles for impiety, Alcibiades' conviction for profanation of the mysteries and mutilation of the herms, and the trial of Socrates. Thucydides' description of the litigation that led up to the Corcyraean *stasis* offers a particularly striking parallel, as noted by Todd (2007, 488): Peithias, a leading figure of Corcyra's democratic faction, was accused of attempting to enslave Corcyra to Athens; exonerated, he brought suit against the five powerful oligarchs who had prosecuted him, charging them with having had vine props cut for themselves from a sacred precinct (Thuc., 3.70.2-6). The religious aspects of Lysias 7 would be enough by themselves, then, to suggest that the suit may have had some sort of political dimension; the Thucydidean passage adds support. Further support comes from subtle indications that both the speaker himself and the land on which the *sēkos* allegedly stood had ties to oligarchy: the land was apparently owned by Peisander (§4ff), one of the principals and architects of the Four Hundred.<sup>17</sup> Moreover, the speaker acquired the land during the archonship of Pythodorus, viz.

---

<sup>15</sup> On which see page 95.

<sup>16</sup> Todd – offering 14.21 and 26.5, 13 and 21 as parallels – notes that the topos is introduced very late and casually in this speech, and so seems to "carry little conviction" (Todd 2007, 539).

<sup>17</sup> On this identification see Todd (2007, 514). Carey (1989, 121) draws attention to Lys 12.66 and 25.9, which mention Peisander as a prominent oligarch.

during the rule of the Thirty.<sup>18</sup> That he remained in the city during their reign may have been damning enough in the eyes of his audience, but it would likely have seemed all the more damning to them that, instead of losing life or property in the course of their rule, he actually grew richer. If the prosecution was motivated by political hostility towards the speaker for his ties to oligarchy, or if they merely wished to exploit the seeming evidence of those ties, the complicated history of the land in question will have made it an attractive target for litigation.<sup>19</sup>

Nowhere in the speech, however, does the speaker confirm or even hint that ties to oligarchy are the basis of the charges against him. The trial in fact resists classification as one of those that pursued the Thirty and their friends: the crime of the *seikos*' removal stands at nearly a decade's remove from the restoration of the democracy. The speaker even affirms that he is not suspected of doing wrong or being powerful under the Thirty (§30), and gives no indication that Nicomachus has claimed otherwise. But that denial of suspicion is itself peculiar. The only other litigants in Lysias who deny collaboration or sympathy with oligarchy are litigants who actually face the accusation.

### **Class tensions**

The speaker tells us little about Nicomachus, and what little he does tell us hardly merits trust, since it invariably feeds into a generic smearing of him as the garden-variety sycophant; the speaker, that is, has every reason to exaggerate his opponent's youth, as he does at §29, so as to strengthen the appearance of excessive ambition or youthful belligerence (Carey 1989, 134-5). What the speaker tells us about himself is for the most part no less to be suspected, since, in turn, the older he seems to the jury, the more respectable he is likely to appear and the less prone to outrages like the destruction of sacred public property. Along these same lines, no more to be trusted is the speaker's seemingly grudging willingness

---

<sup>18</sup> Arist., *Ath. Pol.* 35, names Pythodorus as eponymous archon when the Thirty were in power.

<sup>19</sup> The speaker owns other tracts of land (§24); the prosecutor, if his charge is a fabrication, could have chosen a different one as the site of the crime.

to accept that there may be some truth to his poor reputation, or at least his willingness to grant it for the sake of argument; this maneuver, too, is tactical, as it strengthens his claim to innocence:

ἐγὼ τοίνυν, ὦ βουλή, ἐν μὲν τῷ τέως χρόνῳ, ὅσοι με φάσκοιεν δεινὸν εἶναι καὶ ἀκριβῆ καὶ οὐδὲν ἂν εἰκῇ καὶ ἀλογίστως ποιῆσαι, ἡγανάκτουν ἂν, ἡγούμενος μᾶλλον λέγεσθαι <ἦ> ὥς μοι προσῆκε, νῦν δὲ πάντας ἂν ὑμᾶς βουλοίμην περὶ ἐμοῦ ταύτην τὴν γνώμην ἔχειν, ἵνα ἡγῆσθέ με σκοπεῖν <ἂν>, εἴπερ τοιούτοις ἔργοις ἐπεχείρουν, καὶ ὅ τι κέρδος ἐγένετό μοι ἀφανίσαντι καὶ ἥτις ζημία περιποιήσαντι, καὶ τί ἂν λαθὼν διεπραξάμην καὶ τί ἂν φανερὸς γενόμενος ὑφ' ὑμῶν ἔπασχον. (§12)

Previously, members of the Council, I would get angry when anyone said I was clever, exacting [or stingy] and did nothing without purpose or plan, because I thought I was being described in stronger terms than were appropriate for me. But now I'd like all of you to have that opinion of me, so that you would expect me to consider carefully, if I were to attempt this sort of thing, what I'd gain by removal [of the *sēkos*] and what punishment I'd receive – and what I'd accomplish if I got away with it and what I'd suffer at your hands if I were found out.

But despite its rhetorical convenience, the reputation he grudgingly or hypothetically accepts does conform to some of what he tells us about himself, namely that he is a successful, wealthy landowner (he owns multiple tracts of land, §24, and has performed numerous liturgies, §31). The speaker's willingness to accept his bad reputation is one of the many venial, rhetorically strategic “blemishes” (Usher 1965, 103) that one finds in Lysias' speakers: it invites hostility but shrewdly advises acquittal, since it shows the speaker to be too crafty and self-serving to have committed the crime of which he stands accused. Moreover, by admitting to the reputation of a calculating, devious elite, the speaker signals the importance of his class to the charges against him, the possible obstacle that it poses to a successful outcome, and hence the necessity of gaining control over the jury's thinking in relation to it.

In connection with the speechwriter's apparent sense that his client's class may pose some danger to a successful outcome, it is telling that Nicomachus seems to have explained his lack of witnesses as a consequence of the speaker's wealth and power:

καὶ κατηγορεῖς ὡς ὑπὸ τῆς ἐμῆς δυνάμεως καὶ τῶν ἐμῶν χρημάτων οὐδεὶς ἐθέλει σοι μαρτυρεῖν. (§20)

You charge that it's because of my sway and money that nobody's willing to testify for you. This claim on the part of Nicomachus may seem at first glance a poor attempt to compensate for an obvious, damning deficit in his case (and this is how the speaker treats it at §20), but this type of attack – in which the prejudices that attach to wealth and influence are made weapons against the man who

possesses them – was likely conventional for assaults on wealthy, well-connected litigants.<sup>20</sup> The use of such an attack at §29 thus indicates a perception on the part of the prosecution that the speaker’s class and wealth may elicit mistrust in the jury. That the defense goes to the trouble of rebutting Nicomachus’ accusation indicates that the defense felt similarly. The rebuttal in fact takes a peculiar form, almost conceding defeat on the issue:

τούτων τοίνυν οὐδὲν ποιήσας διὰ τοὺς σοὺς λόγους ἀξιοῖς με ἀπολέσθαι, καὶ κατηγορεῖς ὡς ὑπὸ τῆς ἐμῆς δυνάμεως καὶ τῶν ἐμῶν χρημάτων οὐδεὶς ἐθέλει σοὶ μαρτυρεῖν. καίτοι εἰ φήσας μ’ ἰδεῖν τὴν μορίαν ἀφανίζοντα τοὺς ἐννέα ἄρχοντας ἐπήγαγες ἢ ἄλλους τινὰς τῶν ἐξ Ἀρείουπάγου, οὐκ ἂν ἐτέρων ἔδει σοὶ μαρτύρων· οὕτω γὰρ ἂν σοὶ συνήδεσαν ἀληθῆ λέγοντι, οἵπερ καὶ διαγιγνώσκουσιν ἔμελλον περὶ τοῦ πράγματος. (§21-2)

Well, you did none of this, but you expect to ruin me with your speeches, and you charge that it’s because of my sway and money that nobody’s willing to testify for you. Yet if you’d summoned the Nine Archons or any of the Areopagus when you say you saw me removing the *moria*, you’d have needed no other witnesses; if you had done that, they’d know full well you were telling the truth – and they’re the ones whose judgment would decide the trial.

The speaker does not contest whether enjoys wealth or influence sufficient to buy off witnesses, nor does he even deny buying them off. He contests only whether any of that would have helped him, given that Nicomachus could seek the assistance of men who, being more powerful than the speaker, were above his influence. The speaker, it would seem, is unable to contest his elite status or the dubious freedoms it affords him, and so he instead contests Nicomachus’ portrayal of the power those things grant him to do wrong and escape punishment.

There is good reason for suspecting that similar issues relating to class, wealth and power are inherent in the charge of the *sēkos*’ removal, that its associations to wealth and privilege make it the crime of a wealthy elite hostile to the city. The crime, for one thing, requires ownership of land: given the logistical complexity and physical disruption involved in *sēkos* removal, a perpetrator could hardly expect to escape notice if he committed the crime on public lands or in somebody else’s private fields. Nor is it clear, even if the act itself escapes notice, why the criminal would go to the trouble of removing it from

---

<sup>20</sup> Lysias 29.1 is the only other example in the Lysianic corpus: “If Philocrates didn’t have a lot of Ergocles’ money, he wouldn’t have been able to escape his prosecutors” (εἰ γὰρ μὴ πολλὰ τῶν Ἐργοκλέους εἶχε χρημάτων, οὐκ ἂν οὕτως οἷός τ’ ἦν ἀπαλλάξαι τοὺς κατηγοροῦς).

land not his own, or how he could expect to win the silence of passersby – let alone the silence of a private landowner, who would have strong incentive to report the removal.<sup>21</sup> The crime's only plausible formulation is as the work of the landowner himself.

Further hinting at its elite associations are its requirements in terms of privacy. Only the landed elite could conceal such an act, not just by dint of the fact that they themselves owned the land from which removal was to take place, but also because, we might imagine, their estates and groves could lie outside public view. Privacy and individualism are deeply suspect in classical Athenian political discourse and literature, especially when displayed by the wealthy and powerful.<sup>22</sup> Indeed, mistrust of privacy is inherent to the city's justice system: lacking a police force or professional class of lawyers and judges, citizens were relied upon, as private individuals, to detect prosecute wrongdoing, and, as jurors, to interpret and apply the laws. Such a system can function only if wrongdoing is made visible to the city. Public oversight of private behavior was therefore critical. But it was especially critical in the case of the Athenian elite: wealth and influence enable action at a scale thought potentially threatening the integrity of the democracy, and the elite's resources filled public coffers through the *eisphora* and liturgies. The elite who hid his wealth endangered the polity's ability to pay its servants, underwrite military action and honor religious obligations. Hence the creation of the *antidosis* procedure,<sup>23</sup> which ensured that the expenses of liturgies were distributed fairly among elites and provided a mechanism for punishing those who might try to avoid paying their share.

Also restricting the crime to the realm of elite privilege are its labor requirements. The narrative of it given in the speech pictures the speaker overseeing the work of his slaves and of an oxcart and

---

<sup>21</sup> Some of my observations here are arguments that the speaker himself makes. See §12ff.

<sup>22</sup> On this issue see Ober (1989), Christ (2006), and especially Davidson (1998).

<sup>23</sup> In an *antidosis*, an Athenian whose wealth put him in the liturgic class and who had been called upon to perform a liturgy could pose a challenge to another Athenian, so that the latter either accept the duty for himself or trade property. The wealthier man should prefer to keep his belongings and carry out the duty than become poorer, ensuring, through self-policing, that the wealthiest Athenians would pay their dues. See Christ (1990) on Athenian worries about and attempts to obviate bad citizen behavior, i.e. behavior in the interests of the individual, not the rest of the city.

driver, with the speaker in the supervisory, non-manual role that an elite ought to serve. There is, too, the fact that in order for the speaker to carry off his crime successfully, he will have needed to secure the silence of participants, collaborators and witnesses. The semi-formal system of instrumental friendship in classical Athens, with *philo*i solidifying their bonds through reciprocal favors, means that those in a position to do their friends the greatest favors, such an elite Athenian, will have been especially well-positioned to buy that loyalty.<sup>24</sup>

### Hiding the Thirty

Mention of the Thirty is oblique early in the speech. They are first named shortly after the introduction, in the course of describing how the tract of land from which the speaker apparently removed the *sēkos* came into his possession:

ἦν μὲν γὰρ τοῦτο Πεισάνδρου τὸ χωρίον, δημευθέντων δ' ἐκείνου τῶν ὄντων Ἀπολλόδωρος ὁ Μεγαρεὺς  
 δωρεῖαν παρὰ τοῦ δήμου λαβὼν τὸν μὲν ἄλλον χρόνον ἐγεώργει, ὀλίγω δὲ πρὸ τῶν τριάκοντα Ἀντικλῆς  
 παρ' αὐτοῦ πριάμενος ἐξεμίσθωσεν· ἐγὼ δὲ παρ' Ἀντικλέους εἰρήνης οὔσης ἐωνούμην. (§4-5)

The plot of land used to be Peisander's. When his property was confiscated, it went to Apollodorus of Megara as a gift from the city, who farmed it awhile. A little before the Thirty Anticles bought from him and rented it out, and I bought it from Anticles when there was peace.

The listener who accepts this at face value will tie Anticles' acquisition of the land, not the speaker's, to the period of the Thirty's rule, despite the lack of direct overlap. This uncritical listener will then infer that the land's transfer to the speaker happened with the democracy in place and the city in good order; it would be strange, after all, to describe the rule of the Thirty by reference to peace (and nowhere else in Lysias is their period of rule described this way).<sup>25</sup> This picture is reinforced by what the speaker next says about the Peloponnesian War:

νομίζω γὰρ τοῦ μὲν προτέρου χρόνου, οὐδ' εἰ πολλαὶ ἐνήσαν μυρία, οὐκ ἂν δικαίως ζημιοῦσθαι· εἰ γὰρ μὴ  
 δι' ἡμᾶς εἰσιν ἠφανισμένοι, οὐδὲν προσήκει περὶ τῶν ἀλλοτριῶν ἀμαρτημάτων ὥς ἀδικοῦντας κινδυνεύειν.  
 πάντες γὰρ ἐπίστασθε ὅτι <ὁ> πόλεμος καὶ ἄλλων πολλῶν αἴτιος κακῶν γεγένηται, καὶ τὰ μὲν πόρρω ὑπὸ  
 Λακεδαιμονίων ἐτέμνετο, τὰ δ' ἐγγὺς ὑπὸ τῶν φίλων διηρπάζετο· ὥστε πῶς ἂν δικαίως ὑπὲρ τῶν <τότε> τῇ

<sup>24</sup> The manner in which Nicomachus explains his lack of witnesses hints in this direction.

<sup>25</sup> Lysias' speakers use the euphemism "after the [naval] disaster" to refer to defeat in the war. The passage quoted above (§4-5) is the only instance of which I am aware where one of Lysias' speakers refers to the Thirty euphemistically.

πόλει γεγενημένων συμφορῶν ἐγὼ νυνὶ δίκην διδοίην; ἀλλ' ὥς καὶ τοῦτο τὸ χωρίον ἐν τῷ πολέμῳ δημευθὲν ἄπρατον ἦν πλεῖν ἢ τρία ἔτη, οὐ θαυμαστὸν εἰ τότε τὰς μορίας ἐξέκοπτον, ἐν ᾧ οὐδὲ τὰ ἡμέτερ' αὐτῶν φυλάττειν ἐδυνάμεθα. ἐπίστασθε δέ, ὃ βουλή, ὅσοι μάλιστα τῶν τοιούτων ἐπιμελεῖσθε, πολλὰ ἐν ἐκείνῳ τῷ χρόνῳ δασέα ὄντα ἰδίαις καὶ μορίαις ἐλάαις, ὧν νῦν τὰ πολλὰ ἐκκέκοπται καὶ ἡ γῆ ψιλὴ γεγένηται· καὶ τῶν αὐτῶν καὶ ἐν τῇ εἰρήνῃ καὶ ἐν τῷ πολέμῳ κεκτημένων οὐκ ἄξιοῦτε παρ' αὐτῶν, ἐτέρων ἐκκοψάντων, δίκην λαμβάνειν. (§4-8)

I don't think I can rightly be punished for the time prior [to my owning the land], not even if there had been many *morai* on it. If their disappearance wasn't our doing, it isn't right for us to be imperiled for the crimes of others, as if we were the ones who'd broken the law. You all know, after all, that the war turned out to be responsible for many evils, particularly that things far off were being cut down by Spartans and those closer by were being ransacked by their friends.<sup>26</sup> So how could it be right that I should pay the penalty now for misfortunes that befell the city then? Especially given that the land was confiscated during the war and unsold for more than three years, it's not incredible if they chopped the *morai* down then, when we were powerless to protect our property from them. You know, members of the Council – you who above all have oversight in these sorts of matters – that many areas were bristling with private and sacred olives, of which most have now been cut down and the earth made bare. And even though the same people owned these tracts of land in peace and war, you don't think it right to exact vengeance from them, since others cut them down.

The thought runs roughly like so: the war was responsible for many evils, such as plundering and the chopping down of sacred olives; I purchased the land after the war, when the destruction of olives was no longer happening; I therefore cannot have done as accused. In order for this to convince us, we must conflate two quite separate things: the evils of the Peloponnesian War, which are evils that stemmed from it but were not necessarily contemporaneous with it; and evils during the war, exclusively those evils that were contemporaneous with it. The passage at first claims to concern itself with the evils of the war (ὁ πόλεμος καὶ ἄλλων πολλῶν αἴτιος κακῶν): Lacedaemonian cuttings-down allude to the annual invasions of Attica in the Archidamian War; ransackings by “friends” presumably allude to friends of the Spartans, i.e. either Athenian defectors in the Deceleian War or the Thirty. Either interpretation of the latter term will be apt if the speaker is indeed discussing evils of war, as he claims to be: Deceleian defectors were an evil during the war; the Thirty were an evil of the war, coming in its wake. But in the next sentence the speaker shifts his attention to evils during the war (ὥστε πῶς ἂν δικαίως ὑπὲρ τῶν τότε τῇ πόλει γεγενημένων συμφορῶν ἐγὼ νυνὶ δίκην διδοίην;) and proceeds to limit his (and our) attention to the

---

<sup>26</sup> The speaker does not specify whose friends these men are. Carey and Todd both interpret this to mean “our friends,” but Jeffrey Rusten has pointed out to me that Athenians are not mentioned in the passage; these “friends” are best understood as friends of the Spartans, whom the passage does mention.



choppings-down by Spartans. There is no further mention of plundering, no further reference to Athenians and, possibly, to the Thirty. The reason for these maneuvers shortly becomes clear:

Ἀλλὰ γάρ, ὦ βουλή, περὶ μὲν τῶν πρότερον γεγενημένων πολλὰ ἔχων εἰπεῖν ἱκανὰ νομίζω τὰ εἰρημένα· ἐπειδὴ δ' ἐγὼ παρέλαβον τὸ χωρίον, πρὶν ἡμέρας πέντε γενέσθαι, ἀπεμίσθωσα Καλλιστράτῳ, ἐπὶ Πυθοδώρα ἄρχοντος· (§10)

At any rate, members of the council, I could tell you a lot about what happened earlier, but I think I've said enough. When I took over the land not five days had passed before I rented it out to Callistratus in the archonship of Pythodorus.

Because the Archonship of Pythodorus (404/3) overlapped with the reign of the Thirty (Arist., *Ath. Pol.*, 34), the land must have come into the speaker's possession during their regime. On the most damning reading of the facts – which the absence of any claim to the contrary permits – the speaker's acquisition of the land was the spoils of oligarchy. As mentioned above, merely having stayed in the city will have tarnished the jury's view of the speaker. A resulting loss of life or property could have redeemed him in their eyes, since the man who died at the Thirty's hands or lost his property to their confiscations was beyond suspicion or reproach.<sup>27</sup> The speaker of Lysias 7 retained what he had and seems to have been able to conduct private business, growing wealthier, without fear of molestation.<sup>28</sup>

In recounting the history of the land, then, the speaker is suppressing the Four Hundred and trying to keep the democracy at the forefront of juror's minds. He ties the Thirty to Anticles in order to draw attention away from the appearance that he had any ties to them. He refers to acquisition "after peace was made" because "peace" sounds a good deal less incriminatory than "when the Thirty were in power and slaughtering good, democratic men." And he limits discussion of wrongdoing to actions by non-Athenians during the Peloponnesian War because, regardless of his guilt on the charge of removing the *sēkos*, he cannot expect to win over jurors who believe that he did wrong under the Thirty; he therefore paints a picture of criminality that exculpates Athenians who, as he did, stayed and conducted business in Athens after the war. Indeed, the speaker would have the jury believe that because removals happened

---

<sup>27</sup> E.g. the father of the speaker of Lysias 10 or the family of Nicias in Lysias 18.

<sup>28</sup> At the point the speaker has not yet mentioned or accepted his poor reputation. This is perhaps strategic, since, once he encourages the jury to see him as a bad elite, he encourages them to look for ties to oligarchy. Thus he strictly separates discussion of the Thirty from discussion of his calculating nature.

only during the war and only (it is implied) by Spartan hands,<sup>29</sup> he cannot have committed the crime as charged; he bought the land when there was peace, when such wrongs were no longer being committed. He thereby tacitly equates “peace” with “good (democratic) order,” glossing over the fact that “peace” was the time of the Thirty, when the democracy was effectively nonexistent and oligarchs were confiscating land.

At §4ff, then, the speaker is carefully avoiding direct discussion of oligarchy.<sup>30</sup> In connection with this, it is striking that in the course of the speech the speaker (1) never explicitly denies ties to the Thirty, (2) never denies having benefited from their rule and (3) never even expresses hostility towards them. The speaker does profess a deep reverence for the democracy and its laws (§25); he speaks in general terms about widespread suffering that the city experienced, how “we” were unable to prevent wrongs (§7); and he claims that he is under no suspicion of wrongdoing or being powerful under the Thirty (§27). But none of this directly addresses the accusations he could face in connection with his acquisition of the land, not even the claim that he is not under suspicion of being powerful or doing wrong under the Thirty, because he thereby denies only his guilt as an individual, not guilt or profit by association. Thus the speaker strikes a false note when he claims, in an aside between discussion of the land’s history (§4) and the Peloponnesian War (§6ff),

ἡγοῦμαι τοίνυν, ὃ βουλή, ἐμὸν ἔργον ἀποδεῖξαι, ὥς, ἐπειδὴ τὸ χωρίον ἐκτησάμην, οὔτ’ἐλάα οὔτε σηκὸς ἐνῆν ἐν αὐτῷ. νομίζω γάρ τοῦ μὲν προτέρου χρόνου (§5-6)

And so, members of the council, my job as I see it is to show that when I acquired the plot of land there was neither olive nor *sēkos* on it. I don’t think I can rightly be punished for the time prior [to my owning the land], not even if there had been many *morai* on it.

The defendant need not define the scope of the trial if it is not in question, just as he need not avoid discussion of the Thirty if mention of them is not perceived as dangerous by the speechwriter.<sup>31</sup>

<sup>29</sup> Usher (1999) p. 89 points out that, though the Spartans may indeed have damaged Athenian olive trees, they probably did not go to the trouble of uprooting them.

<sup>30</sup> So, too, he refuses to name the Four Hundred in connection with Peisander.

<sup>31</sup> In Lysias 1, the speaker also uses this sort of declaration to define his job as defendant, and this initial characterization of the suit, too, is no longer valid at the end of the speech.

Direct mention of the Thirty and the speaker's possible ties to them, when it does come, comes at a telling moment:

πότερον δέ μοι κρεῖττον ἦν, ὃ βουλή, δημοκρατίας οὐσης παρανομεῖν ἢ ἐπὶ τῶν τριάκοντα; καὶ οὐ λέγω ὡς τότε δυνάμενος ἢ ὡς νῦν διαβεβλημένος, ἀλλὰ τῷ βουλομένῳ τότε μᾶλλον ἐξῆν ἀδικεῖν ἢ νυνί. (§27)

Which was easier for me, members of the council: to break the law during the democracy or under the Thirty? I say this not as someone who was powerful then or is accused of that now, but because it was much easier then than now for anyone who wished to break the law to do so.

Here, as mentioned above, the speaker is wrapping up his defense on the charge of the *sēkos*' removal; after §30 he will name the *sēkos*, in the final sentence, just once more. What remains are recapitulations, pleas on the jury's sympathy and assaults on Nicomachus for sycophancy. The speaker earlier avoided direct mention of the Thirty or wrongdoing in connection with them. He now calls attention to them. The speaker at first avoids discussing that dangerous topic; late in the speech, he has (ideally) shaped the jury's thinking in such a way as to remove that danger, and so can confront the topic more directly. Indeed, the chapters that lead up to §27 try to shape and control the jury's thinking on the speaker's possible ties to the Thirty by manipulating their thinking on class and class tension.

### Changing self and suit

In two passages, at §1 and §31 (respectively the opening of the speech and the end of its defense on the charge of *sēkos* removal), the speaker paints two very different pictures of himself, the trial, and his role in the city:

πρότερον μὲν, ὃ βουλή, ἐνόμιζον ἐξεῖναι τῷ βουλομένῳ, ἡσυχίαν ἄγοντι, μήτε δίκας ἔχειν μήτε πράγματα· νυνὶ δὲ οὕτως ἀπροσδοκῆτως αἰτίαις καὶ πονηροῖς συκοφάνταις περιπέπτωκα, ὥστ' εἴ πως οἶόν τε, δοκεῖ μοι δεῖν καὶ τοὺς μὴ γεγονότας ἤδη δεδιέναι περὶ τῶν μελλόντων ἔσεσθαι· διὰ γὰρ τοὺς τοιούτους οἱ κίνδυνοι κοῖνοὶ γίνονται καὶ τοῖς μηδὲν ἀδικοῦσι καὶ τοῖς πολλὰ ἡμαρτηκόσιν. (§1)

Members of the council, I used to think that by living a quiet life it was possible, for anyone who wished, to have no truck with legal or public business. Now, though, I've been so unexpectedly surrounded by accusations and foul sycophants that, if it were possible, I think even the unborn ought to fear what the future will bring: because of men like these, those who never broke the law and those who've done many wrongs face the same communal (κοῖνοι) dangers.

==

ἐγὼ γὰρ τὰ ἐμοὶ προστεταγμένα ἅπαντα προθυμότερον πεποίηκα, <ἢ> ὡς ὑπὸ τῆς πόλεως ἡναγκαζόμεν, καὶ τριηραρχῶν καὶ εἰσφορὰς εἰσφέρων καὶ χορηγῶν καὶ τᾶλλα λητουργῶν οὐδενὸς ἤττον πολυτελῶς τῶν πολιτῶν. καίτοι ταῦτα μὲν μετρίως ποιῶν ἀλλὰ μὴ προθύμως οὐτ' ἂν περὶ φυγῆς οὐτ' ἂν περὶ τῆς ἄλλης

οὐσίας ἡγωνιζόμεν, πλείω δ' ἂν ἐκεκτῆμην, οὐδὲν ἀδικῶν οὐδ' ἐπικίνδυνον ἑμαυτῷ καταστήσας τὸν βίον· ταῦτα δὲ πράξας, ἃ οὗτός μου κατηγορεῖ, ἐκέρδαινον μὲν οὐδέν, ἑμαυτὸν δ' εἰς κίνδυνον καθίστην. καίτοι πάντες ἂν ὁμολογήσαιτε δικαιότερον εἶναι τοῖς μεγάλους χρῆσθαι τεκμηρίοις περὶ τῶν μεγάλων, καὶ πιστότερα ἡγεῖσθαι περὶ ὧν ἅπαντα ἡ πόλις μαρτυρεῖ, μᾶλλον ἢ περὶ ὧν μόνος οὗτος κατηγορεῖ. (§31-3)

I have discharged my appointed duties, more enthusiastically than the city required, and as trierarch, as contributor to the *eisphorai*, as *chorēgos* and in all my other liturgies I've been no less magnanimous than any citizen. And yet if I'd done my duty modestly instead of zealously I wouldn't fighting a suit that threatens banishment and the remainder of my property, I'd be wealthier, I'd have broken no law and I wouldn't have put my life in danger; whereas if I did as that man charges, I didn't profit and put myself in danger. And yet all of you would agree it's more just to use weighty evidence in weighty matters, and to deem the things to which the entire city bears witness as more deserving of trust than the accusations made by this one man alone.

At §1 the speaker calls attention to his bafflement at being brought to trial, given that he lived as ought to have kept him out of the public eye in legal suits or politics. At §31 he makes the opposite point, treating the assaults of the sycophant as what the wealthy liturgist should know to expect when he exercises his civic duties with unusual enthusiasm. At §1 he gives no hint of his wealth, let alone wealth sufficient for liturgic duties, nor presents himself as one who, dragged into public view and put upon to perform a *trierarchy* or *chorēgia*, would execute it with enthusiasm. That brio is the province of the latter figure, who, by §31, has already informed us that he is motivated by his regard for and obedience to the city and by his love of his homeland, and that he values the democracy's property as much as he does his own. The former figure discloses nothing about his feelings towards the democracy, nothing about his political loyalties, except his wish to live a private life. The latter figure, who values the property of the city as his own, could hardly lead a private life apart from public business – or even envision life outside the public eye.

The two passages similarly invert characterization of the suit itself. The opening of the speech gives it broad, alarming implications for the city as whole, threatening to subject the innocent to unjust prosecutions and impose the same reprisals on them that the guilty face. This so broadens the interest of the trial that, as the speaker describes the dangers it creates, he makes no reference to himself or his own well-being. His only stated concern is the threat that all in the city will face as a consequences of the current trial. Toward the end of the speech, the reverse is true: where earlier the trial is presented as posing a risk to everyone except the speaker, the suit is now a danger to the speaker alone. This reversal

in scale entails a kind of sociopolitical reversal: at Lysias 7's opening the trial is a concern to any who would live a lawful life, to these as much as to the liturgist, but as the speech draws to a close, it has become a concern to the latter alone. Nor does the speaker mention the liturgic class as such. There is not even the insinuation that the sycophant poses a threat to more than one person. The speaker, after all, faces danger because he executed his duties with uncommon relish. Only the wealthiest, most publicly active man will face the kind of danger the speaker faces.

### **The sociopolitical reversal**

These discrepancies notwithstanding, the speaker's two self-portraits share one important thing in common, which is that each represents a mode of elite self-representation that conforms to the normative role of wealthy, powerful elites in popular Athenian legal and political discourse. The speaker at the opening of the speech is the elite who does not threaten the collective sovereignty of the *demos*, who does not aim at the accumulation of power, has none, and feels helpless without the city's protection.<sup>32</sup> The speaker later in the speech is the elite as public servant and dutiful liturgist, who freely, even gladly, puts his resources before the eyes of his fellow citizens for assessment and spiritedly executes his liturgies; he is a public man whose obedience to the democracy is seen partly in his fervent belief that his private resources are, strictly speaking, the possessions of the city.

The opening of the speech, to the extent that it acknowledges class at all, does so by way of apology; the good of the elite Athenian there lies not in what his public presence offers the city but in the fact that, through absence from public life, he does not harm or threaten it. And the context of the introduction is indeed a discussion of harm: what distinguishes the speaker from his opponents is apparently that, unlike them, he stays out of public view and does not put others in danger. Given this, it is almost by logical necessity that the interest and consequences of the suit pertain to the city, not to the speaker himself; only in this way can he maintain a picture of himself as a man who wants no presence,

---

<sup>32</sup> On the *apragmōn* elite Athenian and the positive associations of his desire not to meddle or engage in political contests see Lateiner (1982).

nor seeks it, in civic or legal spaces. The speaker at the introduction thus makes no demands on the jury's sympathy, nor asks for recognition of his services to the city. By the speech's end, however, the reverse is true. There the speaker foregrounds his wealth, status and role in the city and presents them as a public good. The man at the opening, whom the jury is told by implication not to fear, has become the good elite towards whom they are expected to be grateful, with whom they are asked to sympathize, and whose misfortune they are to find regrettable and so prevent through a ruling in his favor. The speaker at the close, in contrast to the opening, makes strong demands on the jury on his own behalf, which he justifies precisely on the grounds of his elite status.

It is perhaps mere prudence that stops the speaker at the opening of the speech from speaking too openly about his class or wealth or about the public role he might play in the city. Certain features of the speech, as discussed, indicate a concern on the part of the speechwriter that the speaker's class will be a strike against him in the eyes of jurors. Towards the conclusion of the speech, though, this is apparently no longer true. At §31 he apparently feels free to speak about himself with something closer to pride than fear. The arguments that stand between the opening and the conclusion enable that change of posture.

### **The strategies of §12-33: from public to private and from private back to public; constructing the speaker's public persona**

The self-portrait provided, or implied, at §1 has close thematic ties to the discussion that shortly follows: at §1 the speaker expresses a wish to exclude himself from public, political life, and implies that he poses no threat; he then goes on, discussing the Peloponnesian War and the Thirty, to demonstrate his exclusion from their concomitant public and political evils. The opening eleven chapters of the speech, that is, offer a portrait of the man, which supports the picture it then paints of his behavior in the public sphere. The next section of the speech (§12-19) has much the same structure, but its focus is the private sphere. The speaker, as defendant, is of course defending himself against a specific charge, namely removal of the *sēkos*. When he turns his attention to the private sphere, where the crime allegedly

occurred, we therefore expect him to do so with a view to proving his innocence. But that proof begins, paradoxically, with something more akin to self-incrimination:

ἐγὼ τοίνυν, ὃ βουλή, ἐν μὲν τῷ τέως χρόνῳ, ὅσοι με φάσκοιεν δεινὸν εἶναι καὶ ἀκριβῆ καὶ οὐδὲν ἂν εἰκῇ καὶ ἀλογίστως ποιῆσαι, ἡγανάκτουν ἂν, ἡγούμενος μᾶλλον λέγεσθαι <ἦ> ὥς μοι προσῆκε, νῦν δὲ πάντας ἂν ὑμᾶς βουλοίμην περὶ ἐμοῦ ταύτην τὴν γνώμην ἔχειν, ἵνα ἡγῇσθέ με σκοπεῖν, εἴπερ τοιούτοις ἔργοις ἐπεχείρουν, καὶ ὃ τι κέρδος ἐγίγνετό μοι ἀφανίσαντι καὶ ἥτις ζημία περιποιήσαντι, καὶ τί ἂν λαθὼν διεπραξάμην καὶ τί ἂν φανερὸς γενόμενος ὑφ' ὑμῶν ἔπασχον. (§12)

Previously, members of the Council, I used to be angry when anyone said I was clever, exacting [or stingy] and did nothing without purpose or plan, because I thought I was being described in stronger terms than were appropriate for me. Now I'd like all of you to have that opinion of me, so that you would expect me to consider carefully, if I were to attempt this sort of thing, what I'd gain by removal [of the *sēkos*] and what punishment I'd receive – and what I'd accomplish if I got away with it and what I'd suffer at your hands if I were found out.

Earlier, at §6, the speaker spoke in civic terms about felled sacred olives: the city was the collective victim of Spartans who were motivated by hostility to Athens itself. Here, at §12, the crime and criminal are re-imagined in more private, apolitical terms: the hypothetical criminal is now an individual (an Athenian citizen, moreover, who is subject to Athenian law, unlike the Spartan enemy) and is driven by the expectation of personal gain. Thanks to his exclusion from the public sphere, the speaker was blameless during the war, but now, in the private sphere, he assumes the role of aspiring criminal. Note, moreover, how he assumes that role: he says he once resisted it but now defers to the demos' view of him, capitulating to their judgment. A similar capitulating maneuver structures the contrafactual narrative of the crime: supposing that he is greedy and calculating, he grants that he might be inclined to act illegally for profit; what stops him is the threat that he faces from the will and judgment of the demos if they catch wind of his actions. Although the crime and criminal, once public, are now strictly private, the public still have a role, albeit one rather different from their role during the war: during the war they (or rather “we,” §12) were helpless. Now the demos' authority is absolute: they can take revenge on the criminal, even prevent him from breaking the law.

Interpreted in the context of class tension, the passage quoted above offers a number of concessions to the jury that might serve to mitigate their suspicions about the speaker's elite status: the speaker has raised the possibility that he might indeed be a criminal of a stereotypically elite sort; he

concedes that the city is suspicious of wealthy landowners concerned only with their own interests, and that there is probably good reason for suspicion; and by professing his obedience to the demos and his fear of their power, he offers assurances that the city is safe from people like himself, because the city reins in the powerful. In §1-11 the speaker proved his innocence of wrongdoing in the public sphere: he wants no public role; the chopping down of the *sēkos* was strictly an evil of war committed by Spartans; and the speaker was the city's fellow victim. In §12-19 he proves his innocence in the private sphere: he cannot have done wrong even on his own private land, because the public controls the private, even (or especially) in the case of the wealthy elite. Now, though, his innocence is more a choice, something for which he is personally responsible, because what stops him is his awareness of the power of the demos. As the speech unfolds, public control over private behavior remains the constant, central proof of innocence, although it simultaneously comes to inform a broader understanding of the speaker's social position:

οὗτος μέντοι οὐκ ἂν ἔχοι ἀποδείξαι οὐθ' ὥς ὑπὸ πενίας ἠναγκάσθην τοιούτοις ἔργοις ἐπιχειρεῖν, οὐθ' ὥς τὸ χωρίον μοι διεφθείρετο τοῦ σηκοῦ ὄντος, οὐθ' ὥς ἀμπέλοις ἐμποδὼν ἦν, οὐθ' ὥς οἰκίας ἐγγύς, οὐθ' ὥς ἐγὼ ἄπειρος τῶν παρ' ὑμῖν κινδύνων εἴ τι τούτων ἔπραττον. πολλὰς ἂν καὶ μεγάλας ἐμαντῶ ζημίας γενομένας ἀποφύναμι· ὃς πρῶτον μὲν μεθ' ἡμέραν ἐξέκοπτον τὸν σηκόν, ὥσπερ οὐ πάντας λαθεῖν δέον, ἀλλὰ πάντας Ἀθηναίους εἰδέναι. καὶ εἰ μὲν αἰσχρὸν ἦν μόνον τὸ πρᾶγμα, ἴσως ἂν τις τῶν παριόντων ἡμέλησε· νῦν δ' οὐ περὶ αἰσχύνης ἀλλὰ τῆς μεγίστης ζημίας ἐκινδύνευον. πῶς δ' οὐκ ἂν ἦν ἀθλιώτατος ἀνθρώπων ἀπάντων, εἰ τοὺς ἐμαντοῦ θεράποντας μηκέτι δούλους ἐμελλον ἔξειν ἀλλὰ δεσπότης τὸν λοιπὸν βίον, τοιοῦτον ἔργον συνειδότης; ὥστε εἰ καὶ τὰ μέγιστα εἰς ἐμὲ ἐξημάρτανον, οὐκ ἂν οἶόν τ' ἦν δίκην με παρ' αὐτῶν λαμβάνειν· εὖ γὰρ ἂν ἦδειν, ὅτι ἐπ' ἐκείνοις ἦν καὶ ἐμὲ τιμωρήσασθαι καὶ αὐτοῖς μηνύσασιν ἐλευθέρους γενέσθαι. ἔτι τοίνυν, εἰ τῶν οἰκετῶν παρέστη μοι μηδὲν φροντίζειν, πῶς ἂν ἐτόλμησα τοσούτων μεμισθωμένων καὶ ἀπάντων συνειδότην ἀφανίσαι τὸν σηκὸν βραχέος μὲν κέρδους ἔνεκα, προθεσμίας δὲ οὐδεμιᾶς οὔσης τῷ κινδύνῳ τοῖς εἰργασμένοις ἅπασιν τὸ χωρίον ὁμοίως προσῆκον εἶναι σῶν τὸν σηκόν; [ἴν' εἴ τις αὐτοὺς ἠτιᾶτο, εἶχον ἀνενεγκεῖν ὅτῳ παρέδοσαν] νῦν δὲ καὶ ἐμὲ ἀπολύσαντες φαίνονται, καὶ σφᾶς αὐτούς, εἴπερ ψεύδονται, μετόχους τῆς αἰτίας καθιστάντες. εἰ τοίνυν καὶ ταῦτα παρεσκευασάμην, πῶς ἂν οἷός τ' ἦν πάντας πείσαι τοὺς παριόντας, ἢ τοὺς γείτονας, οἳ οὐ μόνον ἀλλήλων ταῦτ' ἴσασιν ἃ πᾶσιν ὁρᾶν ἔξεστιν, ἀλλὰ καὶ περὶ ὧν ἀποκρυπτόμεθα μηδένα εἰδέναι <ἐπειγόμενοι>, καὶ περὶ ἐκείνων πυνθάνονται; ἐμοὶ τοίνυν τούτων οἱ μὲν φίλοι οἱ δὲ διάφοροι περὶ τῶν ἐμῶν τυγχάνουσιν ὄντες· οὗς ἐχρῆν τοῦτον παρασχέσθαι μάρτυρας, καὶ μὴ μόνον οὕτως τολμηρὰς κατηγορίας ποιῆσθαι· [ὅς φησιν] ὥς ἐγὼ μὲν παρειστήκειν, οἱ δ' οἰκέται ἐξέτεμνον τὰ πρέμνα, ἀναθέμενος δὲ ὁ βοηλάτης ὥχετο ἀπάγων τὰ ξύλα. (§14-9)

This man, however, wouldn't be able show that I was forced by poverty to attempt such measures, nor that the presence of the *sēkos* was ruining the land, nor that it interfered with my vines, nor that it was close to the house, nor that I was unaware of the dangers I'd face from you if I had done any of this – the numerous, severe penalties in store for me, which I should emphasize, especially since I apparently tried to cut down the *sēkos* during the day, as if what I needed wasn't to escape everybody's notice but for all Athens to



know. If it had been just a disgraceful action, maybe passersby wouldn't have cared, but in point of fact the danger I faced wasn't disgrace but the severest penalty. And how wouldn't I be the most wretched of men if for the rest of my life I'd have menials who weren't my slaves but my masters, since they would know and be able to testify to my guilt in the matter – so that even if they wronged me in the worst ways I wouldn't be able to exact punishment from them, because I'd know full well that it was in their hands to take revenge and gain their freedom by denouncing me. Even if the thought occurred to me not to worry about my slaves, how on earth would I have dared, for a measly profit, to remove the *sēkos* given that I'd rented the land to so many people, all of whom would all know about it, and given that there was no statute of limitations, whereas it was in the interests of anyone who worked the land that the *sēkos* be kept safe [so that if anyone accused them, they'd be able to pass the blame to the land's next tenant]? As it stands, they've clearly exonerated me. And if they're lying they've given themselves a share of the guilt – and if I arranged even this, how could I have convinced [i.e. bribed] passersby or my neighbors? Neighbors don't just know the things about one another that anyone can see. They find out about what we hide and try to prevent anybody from knowing. And in any case some of my neighbors may be my friends but others are in disputes with me over my property. This man [Nicomachus] should have offered *them* as witnesses, and not made such a brazen accusation all by himself[. He says] how I stood there, how the slaves cut out the roots and how the ox-driver loaded up and drove off with the wood.

Here, for the first time in the speech, the speaker openly discusses his social circumstances. They are not favorable to the crime of which he stands accused. To remove the *sēkos* and escape notice, it seems, would require cooperation and loyalty, but passersby and the speaker's neighbors and household slaves all stand ready to report him. This further develops the self-portraits provided at §1 and §12, since as a private man who keeps to himself (§1) and is concerned strictly with his own interest (§12) he is, naturally, poorly integrated into his community; those who surround and interact with him are not friends qua potential collaborators<sup>33</sup> but enemies qua potential informers. And so it is of necessity that he capitulates to the public once more: he refrains from wrongs, demonstrating that his actions even in private are not of his choosing. Rather than a powerful elite capable of mustering a band of goons to carry out evil plots, he is potentially the slave of his own slaves.

If the jurors accept this picture of how the speaker fits socially into his surroundings, they will be less likely to believe that he could have removed the *sēkos*, or they will expect that, if he had removed it, somebody other than Nicomachus would have reported it ages ago – somebody who, unlike Nicomachus, saw the crime and had evidence of it. In the course of constructing this line of defense, the speaker has nowhere mentioned class or politics, nowhere instructed the jury not to fear him as an elite, but he has

---

<sup>33</sup> Moreover, he stops short of admitting even that he has friends, doing so only by way of demonstrating that some of his neighbors are have every reason to attack him if given cause.

mounted a strong defense in these areas: the proof of his innocence is rooted in a depiction of himself that emphasizes weakness, isolation and cowed subservience to the demos, amounting to a demonstration that wealth and power, even combined with privacy and cunning, do not enable criminality and so are not to be mistrusted by the jury. Neutralization of that mistrust neutralizes, in turn, the prejudices to which it gives rise: if wealth and power are no longer implicated in wrongdoing, blame no longer attaches to them, and the speaker's elite status should no longer count against him.

It is therefore at this point in the speech, after he has defended himself against anti-elite bias, that he begins to speak more openly about his class and his participation in the life of the city. The speaker qua elite, starting at §20, is discussed in ways that integrate him into the city, where he is shown to be beneficial, contributing citizen: he notes his excellent care of other *morai* (§25), i.e. his good behavior in the city at large, not just on the single plot of land in question; no inspector has ever fined him (ibid.); he considers the city's property as valuable to him as his own (ibid.); he has been exceptionally generous in the performance of his trierarchy and *chorēgia* and in contributing to the *eisphorai* (§31). It also at this point that he finally returns to the Thirty and discusses them more openly, denying wrongdoing:

πότερον δέ μοι κρεῖττον ἦν, ὃ βουλή, δημοκρατίας οὔσης παρανομεῖν ἢ ἐπὶ τῶν τριάκοντα; καὶ οὐ λέγω ὡς τότε δυνάμενος ἢ ὡς νῦν διαβεβλημένος, ἀλλὰ ὡς τῷ βουλομένῳ τότε μᾶλλον ἐξῆν ἀδικεῖν ἢ νυνί. ἐγὼ τοίνυν οὐδ' ἐν ἐκείνῳ τῷ χρόνῳ οὔτε τοιοῦτον οὔτε ἄλλο οὐδὲν κακὸν ποιήσας φανήσομαι. πῶς δ' ἂν, εἰ μὴ πάντων ἀνθρώπων ἑμαυτῷ κακονούστατος ἦν, ὑμῶν οὕτως ἐπιμελουμένων ἐκ τούτου τὴν μορίαν ἀφανίζεῖν ἐπεχείρησα τοῦ χωρίου, ἐν ᾧ δένδρον μὲν οὐδὲ ἐν ἔστι,<sup>34</sup> μᾶς δὲ ἐλάας σηκός, ὡς οὗτός φησιν, ἦν, κυκλόθεν δὲ ὁδὸς περιέχει, ἀμφοτέρωθεν δὲ γείτονες περιοικοῦσιν, ἄερκτον δὲ καὶ πανταχόθεν κάτοπτόν ἐστιν; ὥστε τίς ἂν ἀπετόλμησε, τούτων οὕτως ἐχόντων, ἐπιχειρῆσαι τοιούτῳ πράγματι; δεινὸν δέ μοι δοκεῖ εἶναι ὑμᾶς μὲν, οἷς ὑπὸ τῆς πόλεως τὸν ἅπαντα χρόνον προστέτακται τῶν μορίων ἐλαῶν ἐπιμελεῖσθαι, μήθ' ὡς ἐπεργαζόμενον πώποτε ζημιῶσαι <με> μήθ' ὡς ἀφανίσαντα εἰς κίνδυνον καταστήσαι, τοῦτον δ' ὅς οὔτε γεωργῶν ἐγγὺς τυγχάνει οὔτ' ἐπιμελητῆς ἡρημένος οὔθ' ἡλικίαν ἔχων εἰδέναι περὶ τῶν τοιούτων, ἀπογράψαι με ἐκ τῆς γῆς μορίαν ἀφανίζειν. (§27)

Which was easier for me, members of the council: to break the law during the democracy or under the Thirty? I say this not as someone who was powerful then or is accused of that now, but because it was much easier then than now for anyone who wished to break the law to do so. For my part, then, I'll make it clear that not even at *that* time did I do that sort of thing, or any other wrong. Given that you had such oversight, how (unless I was my own worst enemy) could I have attempted to remove the *moria* from that piece of land, where there wasn't a single tree, only the *sēkos* of a single olive, as this man [Nicomachus] claims there was? Road surrounds it. Neighbors live on both sides. It's unfenced. And it's visible from all

<sup>34</sup> Todd (2007) takes as a historical present, which I accept, although in this passage all other past tenses do refer to the past, and all present tenses refer to the present. Carey does not comment.

directions. So, given this, who would have dared to attempt anything of the sort? It seems awfully strange to me that you, to whom the city granted supervision of *moriai* olives in perpetuity, have never once punished me for encroaching [on the *moria*'s sacred space], nor put me on trial for removal [of one], and yet this man, who doesn't farm nearby, who wasn't appointed as an inspector, who isn't of age to have knowledge of these sorts of things, should happen to indict me for removal.

How the discourse of class and the Thirty has changed over the course of the speech, and how this passage reflects that change and relies upon it, become clear when we compare the passage to the earlier discussion of wrongdoing during the Peloponnesian War and the Thirty (§4ff):

Point of comparison	First discussion of the Thirty (§4ff)	Second discussion of the Thirty (§27ff)
When did the removal of a <i>sēkos</i> or <i>moria</i> allegedly or hypothetically happen? When could it have happened?	Removal happened only during the war. It did not happen during peace, i.e. under the Thirty.	Removal is hypothesized as happening after the war, under the Thirty.
How does the speaker discuss his behavior under the Thirty?	He prevents the jury from even asking this question: he crafting his words in ways that prevent the jury from making any mental association between himself and the Thirty.	The speaker explicitly calls for the jury to ask themselves how he might have acted when the Thirty were in power, and explains that he did no wrong.
What kind of crime is the removal of the <i>moria</i> or <i>sēkos</i> ? Is it civic or private?	It is widespread and, as a consequence of war, an expression of hostility to the entire city.	Only one instance of removal is envisioned, and only one perpetrator, namely the speaker.  The only motive given is personal desire to break the law.
Who are the perpetrators?	Spartans are responsible.	The speaker is hypothetically responsible.
What is the speaker's role?	The speaker is victim with the city.	The speaker is the hypothetical criminal.

How is the speaker's innocence proven?	Because he acquired the land in peace, when removals had ceased, he cannot have removed it. His choices are dictated by conditions in the city.	Wrongdoing under the Thirty is possible for anyone who wishes it. He could have made the choice to do wrong, but did not, constrained by the Areopagus' oversight.
--	---	--

The earlier discussion pictures the speaker in a political environment in which he plays no individual role and so bears no individual responsibility for the injuries the city may have suffered. He does not stand out as a distinct presence, no allusion is made to wealth or class, and mention of the Thirty is oblique, misleading. Whether he does wrong is not even of his choosing, since conditions in the city eliminate the possibility. In the later passage all of these conditions have changed, as the Thirty are explicitly called to mind in order to discuss, openly, the speaker's role in the city at that time. He could indeed have broken the law, as anyone could, and so his innocence is no longer preordained. It results from choices, as it has since §12. And these choices are guided, as they have been since §12, by an awareness of the city's power to observe and punish – that is, by the very awareness which proves that the speaker is not an elite to be feared or suspected. The speech has shown that elite status is not in itself cause for suspicion; it has rooted this idea in the public role that the speaker has fashioned for himself over the course of the speech; and that public role is now is the very thing that grounds his claim of innocence under the Thirty.

The two discussions of the Thirty frame the entire discussion of the charge of *sēkos* removal: before §4 and after §27 the speaker makes no claims concerning his guilt or innocence; after §27 he will name the *sēkos*, in the final sentence (§42), just once more. What follows his discussion of the Thirty at §27 are merely recapitulations and conventional pleas for the jury's sympathy and gratitude. Discussion of the Thirty may therefore amount to only a small fraction of the speech's total word count, but they are the alpha and omega of the defense. Proof of innocence in connection with the *sēkos* leads up to, and serves the end of, confronting suspicions of wrongdoing under the Thirty. That he recycles the same arguments that he has been using since §12 confirms it: if the speaker has swayed us, then we will know that he did not remove the *sēkos*, partly because we know he fears the city; and because we know he fears

the city, we will know that he did not do wrong under the Thirty. The two discussions of the Thirty encircle one another, unifying the speech almost chiastically: in the first discussion of *sēkos* removal, the speaker's blameless behavior in the city is proof that he did not remove the *sēkos*; in the second, the proof that he did not remove the *sēkos* shows the blamelessness of his behavior in the city. The speaker has proceeded, stepwise, from the easiest charge to the most difficult – from innocence during the war, to innocence in relation to the *sēkos*, to innocence under the Thirty.

But even at §27 the speaker is treading lightly. His claim that any who wished to do wrong under the Thirty had more license under the Thirty is itself strategic and exculpatory. It implies that crime, although widespread under the Thirty, resulted only from the private decision to do wrong and manifested only as the actions of independent individuals – in essence denying the existence of corporate or cooperative wrongdoing, which would be definitional of the Thirty's own wrongs and the wrongs of those who collaborated with them. The speaker of course has good reason for wanting not to discuss corporate, collective wrongdoing: if all crime was the work of individuals acting individually, then no wrongdoing resulted from association with the Thirty; consequently, even if he profited from his association with the Thirty, the speaker is by implication innocent, because he did not break the law with his own hands. It cannot be true, however, *both* that any who wished to break the law were more able (§27) *and* that the Areopagus' oversight, then as now, would have prevented him from committing the crime (§28), had he wished to commit it. Nor is there any sense in denying that he removed a *sēkos* during the reign of the Thirty; the crime, as formulated by the prosecution, happened ten years later. But logical exactitude is not the point. The point is to neutralize the prejudices that a wealthy defendant faces due to his possible ties, or the appearance of ties, to oligarchy: if any Athenian could do wrong under the Thirty, then criminality is classless, equally a possibility for *thete* and liturgist; but if the Areopagus retained power of oversight and enforcement in connection with sacred olives, then the speaker, the man charged with the care of a *sēkos*, cannot have done wrong. Everyone who stayed in the city was potentially a criminal – everyone except wealthy, landed elites like the speaker.

## **Chapter 5: Lysias 10, “Against Theomnestus”**

*No Shortage of Witnesses: Rewriting the Past and Reversing Defeat in Lysias 10*

## Background and background issues

A complex legal background, comprising three prior actions, lies behind the suit for which Lysias 10 was written. The speech never gives a clear, organized account of that sequence of suits; background information is revealed in dribs and drabs. For that reason, it will be helpful to begin by providing a chronological account: Dionysius, Lysitheus,<sup>1</sup> the speaker and Theomnestus fought together on the Athenian side at a battle that came out badly for Athens;<sup>2</sup> sometime later – it is not clear how long – Theomnestus addressed the assembly (§1); Lysitheus then brought an action against him, charging that he had no legal right to do so because he had thrown away his shield during the aforementioned battle (ibid.); Dionysius and the speaker of Lysias 10 both testified as witnesses to his doing so (§30); Theomnestus, exonerated, brought a *dikē kakēgorias* against Lysitheus (§12) and a *dikē pseduomaturiōn* against Dionysius (§22-4);<sup>3</sup> the result of the trial against Lysitheus is not explicitly stated but must have been victory for Theomnestus (Todd 2007, 629-30); Theomnestus also won his trial against Dionysius, who was then punished with *atimia* (§22); an unknown amount of time passed, after which the speaker brought the current suit, a *dikē kakēgorias* against Theomnestus for remarks allegedly made in the course of Lysitheus' original action, namely the claim that the speaker had killed his own father in the time of the Thirty.

The lengthiness of the dispute may by itself hint at a longstanding, prior animus between the speaker, Lysitheus and Dionysius on the one hand and Theomnestus on the other, but certain features of the suit mark it as likely an episode in an ongoing political rivalry: the procedure that Lysitheus followed

---

<sup>1</sup> Carey prints the manuscript reading Θεωνί at §12, rejecting the previously accepted emendation Λυσitheoi. I use the emended text, but my argument does not hinge on the reading of the manuscript at §12 and is not changed by the choice of one reading or the other.

<sup>2</sup> The speaker nowhere says that the battle was a defeat, but his paraphrase of Dionysius suggests a poor outcome: “that we had waged a most unlucky campaign in which many of us died and those who had kept their shields were convicted of false witness by those who threw theirs away” (ὅτι δυστυχαστάτην ἐκείνην εἶμεν τὴν στρατείαν ἐστρατευμένοι, ἐν ᾗ πολλοὶ μὲν ἡμῶν ἀπέθανον, οἱ δὲ σῶσαντες τὰ ὅπλα ὑπὸ τῶν ἀποβαλόντων ψευδομαρτυρίων ἐάλωκασιν, §25).

<sup>3</sup> On the identification of Dionysius as the witness prosecuted for false witness, see Todd (2007) 629.

in his original challenge, either an *eisangelia* or a *dokimasia rhetorōn*,<sup>4</sup> shows Theomnestus to have had both a political career and enemies who wished to cut it short; and the accusation of cowardice was typical for politically motivated trials. Whether the unnamed speaker was himself a political figure is unknown, but if, as he claims, his father served as general on numerous occasions (§27) – and especially if that man was, as some commentators have thought, Leon of Salamis – it would be reasonable to suppose that he inherited a certain degree of public prominence.<sup>5</sup> As for whether the speaker had political aspirations of his own, his perplexing claim to have brought suit against the Thirty as soon as his age permitted it (§31) may give evidence of a political career or an attempt to launch one;<sup>6</sup> in publicly pursuing his father's enemies, the speaker may have aimed to establish a public presence and affirm his democratic bona fides on the basis of his father's services to the city. Yet another, but weaker, indication of political or lineal rivalry between the speaker and Theomnestus is offered by the contrasts that the speaker draws between his and Theomnestus' fathers, focusing especially on the benefits the speaker's father brought and the defeats for which Theomnestus' father was allegedly responsible.<sup>7</sup>

The speaker's remark that it is twenty years since the restoration (§4) makes the oration one of the few forensic speeches whose setting can be dated precisely (384/3),<sup>8</sup> but none of the men named in the course of the speech has been identified;<sup>9</sup> nor is it known at what battle Theomnestus, Lysitheus and Dionysius fought when Theomnestus allegedly threw away his shield;<sup>10</sup> and no external evidence has been found that corroborates that the trial took place or how the jury ruled. In these respects, the speech

---

<sup>4</sup> On the uncertainty as to what procedure Lysitheus used, see Todd (2007) 663.

<sup>5</sup> On the identification, see Todd (2007) 637-8

<sup>6</sup> The claim is perplexing because the speaker must have brought suit in 384/3, which is to say after the declaration amnesty that should have barred him from doing so. See Todd (2007) 638-9 for further discussion.

<sup>7</sup> Normally it is not until the end of a speech that a Lysianic speaker will remark on his or his family's generosity or dutifulness to the city, or the gains for which he and his family are responsible. Such remarks are found in the opening chapters of Lysias 10, and receive considerably more attention toward the end of the speech. As will shortly be shown, the comparison that the speaker draws between fathers at the beginning of the speech is merely a placeholder for the comparisons that the speaker will later draw between himself and Theomnestus.

<sup>8</sup> This is not to say that the speech was written for a historical trial. Just as for the rest of the Lysianic speeches, the relationship of this speech to its actual legal setting, if the speech was written for an actual trial, is unknowable.

<sup>9</sup> See Todd (2007) 637ff on prosopography.

<sup>10</sup> See Todd (2007) 690 on the difficulty of identifying the battle.



leaves unanswered many of the questions that tend to go unanswered in a Lysianic speech. But it also leaves unanswered what is arguably the central, essential question of the entire suit, one for which we might reasonably expect an answer: what exactly did Theomnestus say that the speaker of Lysias 10 deemed defamatory? Certainly he used the word *apokteinai*: the argument that Theomnestus offered at the preliminary hearing – that he said not *androphonos* but *apokteinai*, which is not one of the *aporrhēta*, and is therefore not guilty of *kakēgoria* – leaves no other possibility. Because the law on *aporrhēta* governed the use of specific words, the speaker’s focus on that one word is somewhat justified; at the same time, however, the speaker never directly quotes Theomnestus, and the phrase, in indirect statement, τὸν πατέρα αποκτεῖναι is not equivalent to the claim that the speaker “killed his own father.” As Todd points out, it cannot be taken for granted that Theomnestus even intended for the remark to be taken at face value; he may very well have been intended it as a throwaway (Todd, 636). Another possibility is that Theomnestus made the remark without even asserting that the speaker did, in fact, kill his own father. For instance, if, as the speaker claims at §25, τὴν στρατείαν really was δυστυχεστάτην, and ἦ πολλοὶ μὲν ἡμῶν ἀπέθανον at the battle, it would be reasonable to suppose that Athens suffered a rout. Theomnestus could not reasonably be found guilty of individual cowardice if he fled the battlefield with the rest of the Athenian forces in the course of a general retreat, since he would be no guiltier of throwing away his shield than any other Athenian hoplite who fled or was repelled by the enemy (including Dionysius, Lysitheus and the speaker). Moreover, if retreat was neither Theomnestus’ decision to make or within his power to prevent, then one could argue that to hold him individually culpable for it would be unjust. But if the jury judges him culpable, one could argue, further, that they must similarly judge the speaker of Lysias 10, who failed to prevent the murder of his father during the reign of the Thirty even though the murder was neither the boy’s decision to make – he was thirteen, after all, and not even present in the city – nor within his power to prevent. In short, Theomnestus may have argued that the speaker of Lysias 10 cannot condemn Theomnestus without simultaneously condemning himself; Theomnestus could therefore have “claimed” that the speaker killed his father in the course of actually denying that he did so.

Thus even if the speaker of Lysias 10 accurately paraphrases some of Theomnestus' words, the assertion he attributes to his opponent could very well be a distortion. The speaker's narrow focus on one potentially incriminating word may therefore be by necessity; had the remark been contextualized, its meaning might have changed, removing its defamatory content.<sup>11</sup> If the speaker aims to prevent the jury from interpreting Theomnestus' remarks in context, then he should insist, precisely as he does, that they ignore Theomnestus' reasons for speaking as he did and judge Theomnestus not on the basis of individual words but on the content of those words. Whatever the reason for the speaker's narrow focus on the word *apokteinai*, it is difficult to imagine that Lysias could have omitted, through simple, innocent oversight, fuller treatment of the remark – especially given that he apparently sees fit elsewhere in the oration to discuss hypothetical crimes (§§6-9) and the remarks of Dionysius (§22) more fully.

But if the speech is striking for its failure to provide information in that one area, it is striking also for providing an unusual wealth information in another area. The fragmentariness of the oratorical corpus makes it difficult to judge how common or rare it was for a suit to have as complex a legal background as Lysias 10 has – and it is safe to assume, given the political uses of the courts, that such back-and-forth was not uncommon – but the speech is certainly exceptional among the surviving Lysianic orations in making its listeners so aware of its complex background. Still more unusual is the manner in which the speech makes use of its background. Lysianic speakers frequently insinuate that their opponents have followed a broad pattern of misconduct and illegality, and some of the speaker's jabs at Theomnestus vis-à-vis background issues have seemingly this flavor; yet whereas such attacks in Lysias ordinarily complement a primary line of argument, they are – or rather become – central to it in Lysias 10: over the course of the speech the speaker attacks Theomnestus in incrementally wider terms, incorporating

---

<sup>11</sup> Theomnestus' assertion that he spoke "in anger" may even hint that this is so; in explaining that he had spoken in anger, Theomnestus may have meant that he was making not a factual claim but a claim about the unfairness, hypocrisy and dishonesty of the testimony given by the speaker.

elements of the background of the suit, so that his prosecution for *kakēgoria* becomes a referendum of Theomnestus' prior three victories as well.<sup>12</sup>

### Misdirection in the prooimion

In chapter 2 of the dissertation I show the opening sentences of Lysias 1 to be rhetorically ironic, counter-intuitive and self-undermining. The opening sentences of Lysias 10 are similarly problematic:

Μαρτύρων μὲν οὐκ ἀπορίαν μοι ἔσεσθαι δοκῶ, ὃ ἄνδρες δικασταί· πολλοὺς γὰρ ὑμῶν ὁρῶ δικάζοντας τῶν τότε παρόντων, ὅτε Λυσίθεος Θεόμνηστον εἰσήγγελλε τὰ ὅπλα ἀποβεβληκότα, οὐκ ἐξὸν αὐτῷ, δημηγορεῖν· ἐν ἐκείνῳ γὰρ τῷ ἀγῶνι τὸν πατέρα μ' ἔφασκεν ἀπεκτονέναι τὸν ἑμαυτοῦ. ἐγὼ δ', εἰ μὲν τὸν ἑαυτοῦ με ἀπεκτονέναι ἡτιᾶτο, συγγνώμην ἂν εἶχον αὐτῷ τῶν εἰρημένων (φαῦλον γὰρ αὐτὸν καὶ οὐδενὸς ἄξιον ἡγοῦμην)· οὐδ' εἴ τι ἄλλο τῶν ἀπορρήτων ἤκουσα, οὐκ ἂν ἐπεξῆλθον αὐτῷ (ἀνελευθέρων γὰρ καὶ λίαν φιλοδίκων εἶναι νομίζω κακηγορίας δικάζεσθαι)· νυνὶ δὲ αἰσχρὸν <τέ> μοι εἶναι δοκεῖ περὶ τοῦ πατρός, οὕτω πολλοῦ ἀξίου γεγεννημένου καὶ ἡμῖν καὶ τῇ πόλει, μὴ τιμωρήσασθαι τὸν ταῦτ' εἰρηκότα, καὶ παρ' ὑμῶν εἰδέναι βούλομαι πότερον δώσει δίκην, ἢ τοῦτ' ὁ μόνος Ἀθηναίων ἐξαίρετόν ἐστι καὶ ποιεῖν καὶ λέγειν παρὰ τοὺς νόμους ὃ τι ἂν βούληται. §1-3

I do not think I'll have any shortage of witnesses, gentlemen of the jury. For I can see that many of you judging this case were among those present when Lysitheus brought an *eisangelia* against Theomnestus on the grounds that he addressed the assembly after throwing away his shield even though it wasn't permitted for him to do so. In the course of that contest he asserted that I killed my father. For my part, if he had charged me with killing his own father, I would have forgiven him what he said, because I considered that man unimportant and worthless. Nor would I have taken action against him if I'd been spoken of with any other of the *aporrhēta* (for it is undignified and over-litigious, I believe, to prosecute for defamation). But as things stand, it seems to me shameful not to punish the man who said such things about my father, who has been worthy of so much to you and to the city; and I want to find out from you whether he'll pay the penalty or whether this man alone of Athenians will have the special privilege of doing and saying, contrary to the laws, whatever he likes.

Just as in Lysias 1, the speaker assumes affinity and concord between himself and his audience: the jury is assured that they know as well as the speaker does that Theomnestus made the allegation attributed to him, and that they become thereby the speaker's witnesses – his allies. Just as in Lysias 1, too, the speaker strengthens the assumed bond via an attack on his opponent:<sup>13</sup> Theomnestus, a man of cowardice

<sup>12</sup> The speaker repeatedly insinuates that Theomnestus did, in fact, throw away his shield (1, 5, 9, 24, 28), openly calls Theomnestus as a hypocrite in regard to his victories against Lysitheus and Dionysius, and attacks him as a naïf (ignorant of the courts) and a fool – lines of attack that converge in the later chapters of the speech, §22-27, becoming one of the grounds for Theomnestus' conviction.

<sup>13</sup> The "opponent" at the opening of Lysias 1 is not the prosecution. As discussed in chapter 2, the speaker presents his speech as a prosecution speech targeting his dead victim in a *graphē moicheias*.

and worthless parentage, gallingly accused the speaker of killing his own father, a father who, worthy of so much and beloved by the city, the jurors must now defend.

Lysias 10 resembles Lysias 1 also in that its opening sentences ought to elicit skepticism from the listener.<sup>14</sup> The opening sentences of Lysias 1 are outrageous simply in proposing that the jury identify with the speaker. The opening of Lysias 10 is undermined by what the jurors as “witnesses,” who therefore know the background of the suit, should in fact know: that Lysitheus’ action ended in victory for Theomnestus; that Theomnestus then brought two countersuits, one a *dikē kakēgorias* against Lysitheus in regard to the allegation that he had thrown away his shield, the other a *dikē pseudomarturiōn* against Dionysius, who had testified for Lysitheus as witness to the same; and that these suits, too, came out in Theomnestus’ favor, one of them resulting in *atimia* for the accused. Had the speaker provided a fuller account of the background, the opening volley would be unsustainable; for if the presiding jurors really did cast votes in Lysitheus’ action – let alone preside over the next two trials, as he later claims they did<sup>15</sup> – the majority of them are likely already to have sided with Theomnestus against the speaker and his associates. They will already have decided at least once that, in a prior dispute with the very man who is again attacking him, Theomnestus had justice on his side. The severity of Dionysius’ punishment further diminishes the plausibility of the speaker’s opening attack:<sup>16</sup> Andocides tells us that under Athenian law false witness was punished with fines until a third conviction, in which case the punishment was *atimia* (And. 1.74); Hypereides claims that this is the reason why potential witnesses fined twice were false testimony were excepted from future requirement to testify (Hyp. *Philipp.* §12).<sup>17</sup> Regardless of whether Dionysius had a checkered legal past or the jury decided that the circumstances merited an unusually

---

<sup>14</sup> It may also elicit laughter: if the jurors know the background of the suit, as the speaker claims they do, they know that the speaker’s dispute with Theomnestus has been a circus of witness testimony and counter-testimony. The speaker likely can find multiple witnesses to support practically any claim he wishes to make in connection with the suit. That is, the problem that the speaker faces is not a “shortage” but rather an abundance of witnesses.

<sup>15</sup> The speaker later suggests that they also decided the subsequent two suits as well. This is partly conventional: speakers sometimes address the jury as a timeless and unchanging institution.

<sup>16</sup> My discussion of the crime draws on Todd 2007 687-8.

<sup>17</sup> See Todd (2007, 689) on the uncertainty as to the exact circumstances under which Athenian law allows *atimia* to be imposed after three convictions and by what procedure that will have happened.

severe punishment, the background of the current suit, fully laid out, does not support the speaker's case as clearly or unproblematically as he claims in his opening remarks.

The rhetorical irony of Lysias 1's opening – as a request for sympathy that the jury eventually rejects – is functional: it prepares the listener for Euphiletus' disapproving self-characterization in the first half of the *diēgēsis*. The rhetorical irony of Lysias 10's opening, if it may be called irony, is more difficult to incorporate into the rhetorical strategy. There is no indication that the juror is ever to doubt the speaker's initial account of the suit's background. In a way, they have no reason to doubt it, because the speaker is, strictly speaking, telling the truth. But it is a disingenuously selective version of the truth, and the speaker later provides the evidence that proves it so: as the speech unfolds, the speaker gradually reveals the rest of the history of the suit; thus even the juror who does not know the background and so cannot challenge the speaker's opening remarks should find himself increasingly skeptical as each new datum comes to light.

It cannot be the case that the speaker intended simply to suppress the facts he omits from the opening. He does, after all, disclose them, and he could hardly avoid doing so: Theomnestus could easily have adverted to his record of victories so as to bolster his credibility among the jurors while diminishing that of the speaker; the speaker has little choice but to forgo against that strategy. Moreover, the speaker must explain, simply because it is what happened, that Theomnestus made the allegedly slanderous remarks in the course of another legal action in which the two men were opponents. And because Athenian defamation law forbade the use of certain words only in specific contexts, the speaker must establish the circumstances of the remarks. But if disclosure was necessary, the staggered disclosure that we find in Lysias 10 was not. The reason for it becomes apparent only when the speech's opening chapters are compared to its later chapters: the very facts omitted from the opening are the central focus of the final third of the speech; from §21 through §27 the speaker vigorously decries Theomnestus' exoneration, his victories, and especially the fate of Dionysius; and he calls on the jurors to treat those injustices; the very elements of the suit's background that he had earlier omitted are the focus of his closing remarks.

This discrepancy between the opening of the speech and its later chapters fits the familiar Lysianic pattern: early in the speech a speaker discusses facts or issues that need not be qualified or explained but in and of themselves reflect poorly on his opponent or are helpful to himself; later, after careful preparation, he finally confronts the more problematic elements of his case. The speaker's initially selective account of the suit's background draws on precisely those elements of the background that reflect well on the speaker and poorly on Theomnestus; and the lack of any mention of Theomnestus' victories in the speech's opening chapters is explained by the danger that their acknowledgment would pose; the speaker is not yet prepared to discuss them. In turn, the fact that the speaker makes those victories his focus late in the speech shows that the speech has somehow removed that danger.<sup>18</sup>

In short, the speaker's initial tone of confidence in the support of the jury is a pose, and his claim that they already "know" the essentially relevant information is misdirection. The juror with full knowledge of the background of the suit is not the speaker's ally. That juror, precisely because of his knowledge, which should incline him to favor Theomnestus, is potentially the speaker's worst enemy. The speaker therefore labors to gain control over the juror's thinking vis-à-vis the background of the suit, first concealing and then, as I will show, using a sequence of interlocking attacks and disclosures aimed at undermining Theomnestus' credibility as a litigant and the justness of his victories. In claiming that the juror "knows" what happened, that is, the speaker pretends to take for granted the very narrative that he then goes on to construct and (re)interpret for his audience: each detail that the speaker successively reveals, each fact that might otherwise reflect well on Theomnestus, is presented in such a way as to convert it into evidence against him.

### **Framing the suit and the background**

---

<sup>18</sup> Also fitting the familiar Lysianic pattern, the opening and close of the speech focus on roughly the same issues but approach them very differently.

In his opening remarks the speaker gives no hint of the central role that the background of the suit will play later in the speech. In fact he gives no indication that the background has any bearing whatsoever:

Μαρτύρων μὲν οὐκ ἀπορίαν μοι ἔσεσθαι δοκῶ, ὃ ἄνδρες δικασταί· πολλοὺς γὰρ ὑμῶν ὁρῶ δικάζοντας τῶν τότε παρόντων, ὅτε Λυσίθεος Θεόμνηστον εἰσήγγελλε τὰ ὄπλα ἀποβεβληκότα, οὐκ ἔξδον αὐτῷ, δημηγορεῖν· ἐν ἐκείνῳ γὰρ τῷ ἀγῶνι τὸν πατέρα μ' ἔφασκεν ἀπεκτονέναι τὸν ἑμαυτοῦ. ἐγὼ δ', εἰ μὲν τὸν ἑαυτοῦ με ἀπεκτονέναι ἡτιᾶτο, συγγνώμην ἂν εἶχον αὐτῷ τῶν εἰρημένων (φαῦλον γὰρ αὐτὸν καὶ οὐδενὸς ἄξιον ἡγούμεν)· οὐδ' εἴ τι ἄλλο τῶν ἀπορρήτων ἤκουσα, οὐκ ἂν ἐπεξῆλθον αὐτῷ (ἀνελευθέρων γὰρ καὶ λίαν φιλοδίκων εἶναι νομίζω κακηγορίας δικάζεσθαι)· νυνὶ δὲ αἰσχρὸν <τέ> μοι εἶναι δοκεῖ περὶ τοῦ πατρός, οὗτω πολλοῦ ἀξίου γεγενημένου καὶ ἡμῖν καὶ τῇ πόλει, μὴ τιμωρήσασθαι τὸν ταῦτ' εἰρηκότα, καὶ παρ' ὑμῶν εἰδέναι βούλομαι πότερον δώσει δίκην, ἢ τούτῳ μόνῳ Ἀθηναίων ἐξαίρετόν ἐστι καὶ ποιεῖν καὶ λέγειν παρὰ τοὺς νόμους ὃ τι ἂν βούληται. (§1-3)

I don't think I'll have any shortage of witnesses, gentlemen of the jury. For I can see that many of you judging this case were among those present when Lysitheus brought an *eisangelia* against Theomnestus on the grounds that he addressed the assembly after throwing away his shield even though it wasn't permitted for him to do so. In the course of that contest he asserted that I killed my father. Well, for my part, if he had charged me with killing his own father, I would have forgiven him what he said, because I considered that man unimportant and worthless. Nor would I have taken action against him if I'd been spoken of with any other of the *aporrhēta* (for it is undignified and over-litigious in my view to prosecute for defamation). But as things stand, it seems to me shameful not to punish the man who said such things about my father, who has been worthy of so much to you and to the city; and I want to find out from you whether he'll pay the penalty or whether this man alone of Athenians will have the special privilege of doing and saying, contrary to the laws, whatever he likes.

The fact that it was in the course of Lysitheus' challenge that Theomnestus slandered the speaker is not treated as interesting or significant in itself but rather as essentially a coincidence, which the speaker mentions merely to remind the jury of the event to which they were witnesses. There is no explicit mention of Theomnestus' subsequent actions, but the speaker's disdain towards defamation suits is a signal, to the juror familiar with the previous trials, that he categorically disapproves of people who, like Theomnestus, bring such suits (i.e. the sort of suit that the speaker now brings). The speaker, that is, expresses disapproval towards defamation suits as a category; he gives no hint of his feelings toward the specific defamation suit that Theomnestus brought against Lysitheus, no hint of the outrage he will later express in regard to the conviction of Lysitheus or Dionysius. The opening remarks, if they reveal anything about the speaker's feelings towards the first three trials, reveal that he considers them, by turns, unimportant and distasteful.

Further distancing the suit from the previous three actions is the speaker's expression of contempt towards Theomnestus' father: the speaker's interest is not, we are given to believe, the pursuit of any personal vendetta against Theomnestus but rather the rescue of his own noble father; nor would the speaker pursue a defamation suit if it concerned a man who, like Theomnestus' father, is worthy of so little in the eyes of the city. By this reasoning, the involvement of Theomnestus in the suit, too, is something of a coincidence: if the jury properly grasp the origin of the suit and the speaker's purpose, they will realize that the central concern is neither Theomnestus nor his victories, and certainly not the conviction of Lysitheus or Dionysius, but rather the speaker's father.

### **The speaker's altered attitude at the close of the speech**

Later in the speech, the speaker takes a different approach to the suit and its relationship to the actions that preceded it. At the opening, the formal charge of slander was, in a way, beside the point; the previous three actions were irrelevant; and Theomnestus' victories were apparently not worth mentioning. At the end of the speech, by contrast, the speaker argues for Theomnestus' conviction precisely on the grounds that the background of the suit demands it:

οὗτος οὖν ἔνοχος μὲν ὦν τῇ αἰτίᾳ, ἐλάττονος δὲ οὕσης αὐτῷ τῆς συμφορᾶς, οὐ μόνον ὑφ' ὑμῶν ἠλεήθη, ἀλλὰ καὶ τὸν μαρτυρήσαντα ἠτίμωσεν. ἐγὼ δὲ ἑώρακὼς μὲν ἐκεῖνο τοῦτον ποιήσαντα ὃ καὶ ὑμεῖς ἴστε, αὐτὸς δὲ σώσας τὴν ἀσπίδα, ἀκηκοὼς δὲ οὕτως ἀνόμον καὶ δεινὸν πρᾶγμα, μεγίστης δὲ οὕσης μοι τῆς συμφορᾶς, εἰ ἀποφεύξεται, τοῦτ' ὃ οὐδενὸς ἀξίας, εἰ κακηγορίας ἀλώσεται, οὐκ ἄρα δίκην παρ' αὐτοῦ λήψομαι; τίνας ὄντος ἐμοὶ πρὸς ὑμᾶς ἐγκλήματος; πότερον ὅτι δικαίως ἀκήκοα; ἀλλ' οὐδ' ἂν αὐτοὶ φήσαιτε. ἀλλ' ὅτι βελτίων καὶ ἐκ βελτιόνων ὁ φεύγων ἐμοῦ; ἀλλ' οὐδ' ἂν αὐτὸς ἀξιώσειεν. ἀλλ' ὅτι ἀποβεβληκὼς τὰ ὅπλα δικάζομαι κακηγορίας τῷ σώσαντι; ἀλλ' οὐχ οὗτος ὁ λόγος ἐν τῇ πόλει κατεσκέδασται. ἀναμνήσθητε δὲ ὅτι μεγάλην καὶ καλὴν ἐκείνην δωρεάν αὐτῷ δεδώκατε· ἐν ἣ τὶς οὐκ ἂν ἐλεήσειε Διονύσιον, τοιαύτη μὲν συμφορὰ περιπεπτωκότα, ἄνδρα δὲ ἄριστον ἐν τοῖς κινδύνοις γεγεννημένον, ἀπιόντα δὲ ἀπὸ τοῦ δικαστηρίου λέγοντα ὅτι δυστυχεστάτην ἐκείνην εἶημεν στρατείαν ἐστρατευμένοι, ἐν ἣ πολλοὶ μὲν ἡμῶν ἀπέθανον, οἱ δὲ σώσαντες τὰ ὅπλα ὑπὸ τῶν ἀποβαλόντων ψευδομαρτυρίων ἐαλώκασι, κρεῖττον δὲ ἦν αὐτῷ τότε ἀποθανεῖν ἢ οἴκαδ' ἐλθόντι τοιαύτη τύχη χρῆσθαι; μὴ τοίνυν ἀκούσαντά Θεόμνηστον κακῶς τὰ προσήκοντα ἐλεεῖτε, καὶ ὑβρίζοντι καὶ λέγοντι παρὰ τοὺς νόμους συγγνώμην ἔχετε. τίς γὰρ ἂν ἐμοὶ μείζων ταύτης γένοιτο συμφορά, περὶ τοιούτου πατρὸς οὕτως αἰσχροῦς αἰτίας ἀκηκοῦσι; (§22-6)

Even though he was liable (ἔνοχος) to the accusation and the danger (συμφορᾶς) to him was fairly minor, you not only pitied him (ἠλεήθη) but even disenfranchised the witness. But having seen this man doing the things you, too, know about; having kept my shield; and being now accused of so unlawful and terrible a deed, and facing so great a disaster if he is acquitted, whereas for him it is unworthy of attention if he is



convicted of defamation – will I now exact no penalty from him? Is it because of some charge brought before you against me? Is it because I've been justly accused? Not even you yourselves would say that. Or is it because I threw away my shield and am now bringing suit against someone who kept his? But that's not the story that has scattered itself around the city. Remember that you gave him a great and beautiful gift; for in these circumstances who would not pity Dionysius, who was beset with such misfortune, and [showed himself?] the best of men in the face of danger, and was saying as he left the courtroom that we had engaged in a most disastrous campaign in which many of us died, and those who kept their shields had been convicted of false witness by those who threw them away; and that it would be better to die than to return home to meet with such a fate. So don't pity Theomnestus if he has been ill spoken of [accused] but in fitting terms, or forgive someone who commits hybris and speaks against the laws. For what greater misfortune could there be for me than this – to have been accused of so shameful a crime in relation to such a father?

The speaker here continues, in a way, the line of argument that he set out at the opening: the rescue of an upstanding man, namely the speaker's father, was his focus at the opening, and that man's excellence was contrasted with the relative worthlessness of Theomnestus' own father; here the speaker's focus is the rescue of another upstanding man, namely Dionysius, whose excellence is contrasted with the cowardice of Theomnestus himself. At the end of the speech as at the beginning, what concerns the speaker is not defamation law per se but the application of defamation law in cases where its use protects the deserving. That principle, though, is applied and framed rather differently at the end of the speech. At the opening, it was applied to fathers; at §22-7, to Dionysius, Theomnestus and the speaker: unlike Theomnestus, Dionysius and the speaker are courageous, beyond reproach – victims of Theomnestus much as the speaker's father was at the opening of the speech. The previous three suits, which at the opening of the speech were essentially irrelevant, have become essential to the jury's understanding of their task in the current trial; they are urged to convict Theomnestus, first, because he really did throw away his shield, second, because the speaker and Dionysius did not throw away theirs, and, third, because Dionysius was telling the truth and acted properly as witness yet suffered the loss of his civic rights. Theomnestus' defamatory remark – the alleged claim that he killed his own father, i.e. the very thing for which the speaker brought suit – is acknowledged only in passing.<sup>19</sup>

### **Discussing the law and disputing the past**

---

<sup>19</sup> They become more central in §28-32, where the speaker discusses his father at length.

Because of his track record of victories, the juror has every reason to trust Theomnestus as an authority on matters of defamation, to regard him as the likely victim in this suit, and to believe that he deserves their support once again. The speaker is in a less favorable position. Not only is he associated with men fined for slander and disenfranchised for bearing false witness; he has testified alongside these people against the man whom they wronged, and who is now, once more, targeted by one of the men who originally attacked him. Theomnestus could plausibly claim that the current suit represents another episode of unwarranted aggression premised on lies. This is why at the opening of the speech the speaker presents the suit as an obvious win for him, and why he presents it in such a way so to suggest that it is unconnected to the previous three suits: in detaching the suit from its complicated history, the speaker hopes to induce the jury not to import the prejudices and judgments they may have formed in the course of the previous three actions, so that they will instead to judge the suit as a separate matter on a separate topic. Similarly, because defamation law is one of the areas in which Theomnestus has shown himself such a competent legal actor, the speaker disparages defamation suits: in direction the jury's attention so that they will think not about the law on *aporrhēta* but about the speaker's father, the speaker encourages them not even to judge the case as a defamation suit. The opening remarks turn the jury away from ideas and mental associations that, in connection with the background, might incline them against the speaker and toward Theomnestus.

What follows the *prooimion* in a Lysianic forensic speech is ordinarily the *diēgēsis*. Lysias 10 has no *diēgēsis*. Where it would normally be found lies instead a lengthy discussion of statutory interpretation and legal terminology. This section of the speech (§6-21) is exceptional not just in Lysias but in the oratorical corpus as a whole. No other speaker discusses the topics that the speaker of Lysias 10 addresses in these chapters – e.g., linguistic evolution, lexical obsolescence and the nuances of legal language and statutory interpretation – nor does any other speaker quote so many laws that have no actual bearing on his case. The speaker introduces this section of the speech (§6-21) with a clear statement of the argument that he intends disprove:

ἴσως τοίνυν, ὃ ἄνδρες δικασταί, περὶ τούτων μὲν οὐδὲν ἀπολογήσεται, ἐρεῖ δὲ πρὸς ὑμᾶς ἅπερ ἐτόλμα λέγειν καὶ πρὸς τὸν διαιτητὴν, ὥς οὐκ ἔστι τῶν ἀπορρήτων, ἐάν τις εἴπῃ τὸν πατέρα ἀπεκτονέναι· τὸν γὰρ νόμον οὐ ταῦτ' ἀπαγορεύειν, ἀλλ' ἀνδροφόνον οὐκ ἔαν λέγειν. (§6-7)

Well perhaps, gentlemen of the jury, he'll not make a defense in regard to these issues but will instead say to you what he dared say to the arbitrator as well, that it's not one of the *aporrhēta* for somebody to say somebody killed his own father, because the law doesn't forbid that but rather bars saying *androphonos*. By the end of §8, however, the speaker has completed that line of argument; the ensuing thirteen chapters, which ostensibly continue the same line of thought, only belabor the point, pursuing the sort of logical exhaustion that one also finds in Lysias 7 (See page 118). Certainly there are reasons for the speaker to continue to develop his argument past the point of completion: not only is it conventional to do so (*ibid.*), but repeating the argument while providing additional examples should serve to strengthen its persuasive effect. Moreover, one argument naturally opens the way to others; thus after showing Theomnestus' analysis of the law to be preposterous, the speaker goes on to argue that even Theomnestus himself recognizes its preposterousness, with the result that he is made to seem not just wrong but dishonest as well. But as the speaker's argument develops it becomes apparent that his attack on Theomnestus' defense strategy is only a starting point for a line of argument that will lead the jury, ultimately, to think more broadly about Theomnestus' behavior, i.e. his conduct on the battlefield and in the courtroom.

The first step in this line of attack (§6-11) is the refutation of the argument attributed to Theomnestus in regard to defamatory language and the law on *aporrhēta*:

ἐγὼ δὲ οἶμαι ἡμᾶς, ὃ ἄνδρες δικασταί, οὐ περὶ τῶν ὀνομάτων διαφέρεισθαι ἀλλὰ τῆς τούτων διανοίας, καὶ πάντας εἰδέναι ὅτι, ὅσοι <ἀπεκτόνασί τινας, καὶ ἀνδροφόνον εἰσί, καὶ ὅσοι> ἀνδροφόνον εἰσί, καὶ ἀπεκτόνασί τινας. πολὺ γὰρ ἂν ἔργον ἦν τῷ νομοθέτῃ ἅπαντα τὰ ὀνόματα γράφειν ὅσα τὴν αὐτὴν δύναμιν ἔχει· ἀλλὰ περὶ ἑνὸς εἰπὼν περὶ πάντων ἐδήλωσεν. οὐ γὰρ δήπου, ὦ Θεόμνηστε, εἰ μὲν τις σε εἴποι πατραλοῖαν ἢ μητραλοῖαν, ἡξίους ἂν αὐτὸν ὀφλεῖν σοὶ δίκην, εἰ δὲ τις εἴποι ὡς τὴν τεκοῦσαν ἢ τὸν φύσαντα ἔτυπτες, ὧς ἂν αὐτὸν ἄξιμῳ δεῖν εἶναι ὡς οὐδὲν τῶν ἀπορρήτων εἰρηκότα. ἡδέως δ' ἂν σου πυθοίμην (περὶ τοῦτο γὰρ δεινὸς εἶ καὶ μεμελέτηκας καὶ ποιεῖν καὶ λέγειν)· εἴ τις σε εἴποι ῥῖψαι τὴν ἀσπίδα, ἐν δὲ τῷ νόμῳ εἴρηται, «ἐάν τις φάσκη ἀποβεβληκέναι, ὑπόδικον εἶναι», οὐκ ἂν ἐδικάζου αὐτῷ, ἀλλ' ἐξήρκει ἂν σοὶ ἐρριφέναι τὴν ἀσπίδα λέγοντι οὐδὲν σοὶ μέλειν; οὐδὲ γὰρ τὸ αὐτὸ ἔστι ῥῖψαι καὶ ἀποβεβληκέναι· (§7-9)

But I think, gentlemen of the jury, that we're in dispute not about words but about their meaning, and that everyone knows that those who have killed people are also *androphonoi* and that those who are *androphonoi* also have killed people. It would have been quite a task for the lawgiver to write all the words that have the same significance. Instead, by discussing one of them, he was clear about them all. I assume, Theomnestus, that if someone called you *patroloiās* or *mētraloīās*, you'd think he ought to owe a penalty to you, but if someone said that you used to beat the woman who gave you birth or the man who begat you,

you'd think he ought to go unpunished, presumably because he hadn't said any of the *aporrhēta*. And I'd gladly learn from you, since you're skilled and practiced in the matter, both in deed and in speech: if someone said you threw away (ῥῖψαι) your shield – and it says in the law that “if someone asserts that someone has discarded (ἀποβεβληκέναι), let him be liable to prosecution” – would you not prosecute him? Or would it be enough for you to throw away your shield, saying it was no concern of yours, given that “to throw” (ῥῖψαι) and “to have discarded” (ἀποβεβληκέναι) aren't the same thing?

The speaker then proceeds to extend the principle to include legal terminology on theft and kidnapping

(§10ff). The discussion of shield-throwing might seem therefore to be merely one illustration of

Theomnestus' flawed legal reasoning, but it stands out from other examples for at least two reasons: first, the speaker has already referred to Lysitheus' accusation of shield discarding, and done so without explaining that Theomnestus was ever cleared of blame; second, only in this example of Theomnestus' (hypothetical) bad legal reasoning does the speaker assert that Theomnestus is “practiced” in the matter.

Whether the “matter” to which he refers is the action of throwing away the shield or bringing prosecution is unclear, and probably deliberately so; at the end of the speech the speaker clearly asserts that

Theomnestus discarded his shield; here, closer to the beginning of the speech and early in the attack on

Theomnestus, the speaker can afford only to insinuate it. Despite its apparent restraint, however, this is

the most pointed attack on Theomnestus that the speaker makes in the course of reducing Theomnestus'

defense strategy; it is the most developed in his list of examples and the only one directly applicable to his

opponent. The speaker's interest in reviving old allegations is clear, then, as early as §9.

In the next step of the speaker's attack, the background of the suit becomes more central to the jury's understanding of the current suit:

πάντες γὰρ ἐπίστασθε ὅτι ἐν ἐκείνῳ τῷ χωρίῳ, ὅταν τὰς τοῦ φόνου δίκας δικάζωνται, οὐ διὰ τούτου τοῦ ὀνόματος τὰς διωμοσίας ποιοῦνται, ἀλλὰ δι' οὐδὲν ἐγὼ κακῶς ἀκήκοα· οὐκοῦν ἄτοπον ἂν εἴη τὸν δρᾶσαντ' ἀφεῖναι φάσκοντα ἀνδροφόνον εἶναι, ὅτι ὁ διώκων, ὡς ἔκτεινε, <πρὸς> τὸν φεύγοντα διωμόσατο; τί γὰρ ταῦτα, ὧν οὗτος ἐρεῖ, διαφέρει; καὶ αὐτὸς μὲν Λυσιθέῳ κακῆγορίας ἐδικάσω εἰπόντι σε ἐρριφέναι τὴν ἀσπίδα. καίτοι περὶ μὲν τοῦ ῥίψαι οὐδὲν <ἐν> τῷ νόμῳ εἴρηται, ἐὰν δέ τις εἴπῃ ἀποβεβληκέναι τὴν ἀσπίδα, πεντακοσίας δραχμὰς ὀφείλειν κελεύει. οὐκ οὖν δεινόν, εἰ ὅταν μὲν δέῃ σὲ κακῶς ἀκούσαντα τοὺς ἐχθροὺς τιμωρεῖσθαι, οὕτω τοὺς νόμους ὥσπερ ἐγὼ νῦν λαμβάνεις, ὅταν δ' ἕτερον παρὰ τοὺς νόμους εἴπῃς κακῶς, οὐκ ἀξιοῖς δοῦναι δίκην; πότερον οὕτως σὺ δεινὸς εἶ ὥστε, ὅπως ἂν βούλῃ, οἷός τ' εἶ χρῆσθαι τοῖς νόμοις, ἢ τοσοῦτον δύνασαι ὥστε οὐδέποτε οἶε τοὺς ἀδικουμένους ὑπὸ σοῦ τιμωρίας τεύξεσθαι, εἴτ' οὐκ αἰσχύνῃ οὕτως ἀνοήτως διακείμενος, ὥστε οὐκ ἐξ ὧν εὖ πεποίηκας τὴν πόλιν, ἀλλ' ἐξ ὧν ἀδικῶν οὐ δέδωκας δίκην, οἶε δεῖν πλεονεκτεῖν; (§12-4)

You all know that [on the Areopagus], when they hold suits about murder (φόνου), they make their oaths not with that word but with the one with which I've been slandered (i.e. ἀποκτενεῖν): would it not be

preposterous to acquit a man who [committed murder], saying that he is an ἀνδροφόνος, on the grounds that the prosecutor swore in his *diomōsia* that the defendant had “killed” (ἐκτείνε)? How does this differ from what this man will say? And you yourself prosecuted Lysitheus for saying that you had thrown away your shield. And yet nothing is said in the law about “throwing” (ρῖψαι), but if someone says someone has discarded his shield, it says he owes five hundred drachmas. Is it not then incredible, if when it’s necessary for you to get revenge on your enemies when you’re spoken badly about, you take the laws just as I now am, but when you slander someone else contrary to the laws, you don’t think you ought to pay the penalty? Is it that you’re so clever that you’re able to use the laws however you wish, or is it that you think you are so powerful that the men you wrong will never get revenge? Aren’t you ashamed to be so stupid that you think you should have some advantage not on the basis of any good you’ve done the city but on the basis of crimes for which you haven’t paid the penalty?

The speaker focuses his attention first on Theomnestus’ incompetence in matters of law and litigation, and then, by way of that incompetence, the hypocrisy Theomnestus showed in his dispute with Lysitheus. It should be noted that this discussion of Theomnestus’ prosecution of Lysitheus is the speech’s first mention of the suit; the speaker thereby fills one of the gaps created by his omissions at the opening of the speech. He continues to suppress the inconvenient fact of Theomnestus’ victory, but at the same time he cleverly sidesteps the issue of its outcome: regardless of whether Theomnestus actually threw away his shield or successfully prosecuted Lysitheus, his inconsistency vitiates his argument in the current suit and, by extension, his argument in the previous suit as well. In the previous step of the speaker’s attack (§6-11), the speaker merely showed that Theomnestus’ defense argument was worthless and incoherent in the context of the current suit. In the second step (§11-14), the speaker incorporates one of Theomnestus’ counter-prosecutions, making it evidence against him; the background of the suit thus enters the jury’s understanding of the current suit.

In the third and final step (§15-20) the speaker expands and intensifies his attack yet again, albeit with a surprising change in tone: after the bemused disdain of §6, which then resolves into incredulous frustration at §14, the speaker at §15 assumes a patronizing, exasperated tone. No longer angry at Theomnestus, the speaker is embarrassed for him:

Ἐγὼ τοίνυν, ὧ ἄνδρες δικασταί, ὑμᾶς μὲν πάντας εἰδέναι ἡγοῦμαι ὅτι ἐγὼ μὲν ὁρθῶς λέγω, τοῦτον δὲ οὕτω σκαιὸν εἶναι ὥστε οὐ δύνασθαι μαθεῖν τὰ λεγόμενα. βούλομαι οὖν αὐτὸν καὶ ἐξ ἐτέρων νόμων περὶ τούτων διδάξει, ἐάν πως ἀλλὰ νῦν ἐπὶ τοῦ βήματος παιδευθῇ καὶ τὸ λοιπὸν ἡμῖν μὴ παρέχῃ πράγματα.

I think, gentlemen of the jury, that you all know that I’m speaking the truth, but that this man is so benighted that he isn’t able to understand what’s being said. So I would like to teach him about this also on

the basis of other laws, in case he may be educated on the speaker's platform and not stir up trouble in the future.

He then lists laws that give evidence of linguistic change and archaism, and rounds off the attack:

πολλὰ δὲ τοιαῦτα καὶ ἄλλα ἐστίν, ὧς ἄνδρες δικασταί. ἀλλ' εἰ μὴ σιδηροῦς ἐστίν, οἶομαι αὐτὸν ἔννουν γεγενῆσθαι ὅτι τὰ μὲν πράγματα ταῦτά ἐστι νῦν τε καὶ πάλαι, τῶν δὲ ὀνομάτων ἐνίοις οὐ τοῖς αὐτοῖς χρώμεθα νῦν τε καὶ πρότερον. δηλώσει δέ· οἰχίσεται γὰρ ἀπὼν ἀπὸ τοῦ βήματος σιωπῇ. εἰ δὲ μή, δέομαι ὑμῶν, ὧς ἄνδρες δικασταί, τὰ δίκαια ψηφίσασθαι, ἐνθυμουμένους ὅτι πολὺ μείζον κακὸν ἐστίν ἀκοῦσαί τινα τὸν πατέρα ἀπεκτονέσθαι ἢ τὴν ἀσπίδα ἀποβεβληκέναι. ἐγὼ γοῦν δεξαίμην ἂν πάσας τὰς ἀσπίδας ἐρριφέναι ἢ τοιαύτην γνώμην ἔχειν περὶ τὸν πατέρα. (§20-1)

There are many other things of this sort [i.e. laws whose terminology is archaic and whose proper interpretation therefore demands that we attend to the word's meaning than to its content], but if he isn't made of iron, I expect he has started to understand that things themselves are the same now as in the past, but that we don't use some of the same words now as we used previously. He'll make this clear; he'll leave the rostrum and depart in silence. But if he doesn't, I beg you, gentlemen of the jury, to cast just votes, mindful that it's a much greater evil to be said to have killed one's father than to be said to have thrown away one's shield. Well, for my part, I'd gladly to throw away every shield rather than have such thoughts towards my father.

The speaker's attacks have incrementally broadened: at first Theomnestus is merely wrong about the law (§6-11); next he is dishonest and a hypocrite (§12-14); finally he is a pest and a fool. The refutation of Theomnestus' argument on defamation law is thus only the starting point in a line of attack; the target ultimately is the jury's trust in Theomnestus as a legal thinker. With his credibility in this area undermined, the speaker is now prepared to confront the rest of the inconvenient facts that he has until now been silent about; at §22 that he finally discusses the suit against Dionysius. Had he done so at the opening, without first showing his opponent to be unjust, a liar and a hypocrite, Dionysius' conviction could hardly have been presented as an outrage, let alone as grounds for Theomnestus' conviction. The speaker's widening attacks on Theomnestus have widened the scope of his suit, so that it becomes a judgment not just on a single instance of slander but Theomnestus' legal career. The dismissive, sarcastic, confident tone of the speech's opening is thus seen to be a front; it is a careful, narrowly prescribed attack that focuses on those few areas where the speaker finds Theomnestus weak and at the same time suppresses the inconvenient facts of his three prior victories.

## Conclusion

This analysis of the rhetorical strategy and structure of the speech explains several of its strange features. For instance, Lysias' speakers are rarely loath to attack the character and reputation of their opponents. One notable exception is Lysias 1: Euphiletus says barely an ill word about the man he killed (see page 33) or even about the people prosecuting him. Here again we find similarity between Lysias 1 and Lysias 10. The speaker of Lysias 10 accuses Theomnestus of having a worthless father and of being a hypocrite, fool and coward. These attacks at first appear to be of the broad, vicious sort that any Lysianic speaker might make, but when they are set beside other examples of *ad hominem* attacks in the orators, the assault is seen to be of a different, milder sort: the speaker actually makes no general attack on Theomnestus' character; his attacks are limited to the man's conduct in court (the word *sykophantēs* appears nowhere in the speech) and in battle; and the attacks on Theomnestus' father are, in a way, not unprovoked, since Theomnestus has apparently made an attack on the speaker vis-à-vis his own father. The speaker, that is, attacks Theomnestus within carefully prescribed areas directly relevant to the suit and its background; the central chapters of the speech – where the *diēgēsis* would normally be found – are an extended attack on Theomnestus with reference to the sole issue of Theomnestus' credibility as litigant and jurist.

No other Lysianic speaker in a private suit attacks his opponent in a manner so carefully confined to the issues that the suit raises. Given Theomnestus' track record of victories, the speech's restraint is perhaps mere prudence on the part of the speechwriter: if the speaker of Lysias 10 is to defeat Theomnestus on an issue on which he has already shown himself a capable interpreter of the laws, and if the speaker is to do this in connection with a series of disputes in which Theomnestus has already been judged to be blameless, he would do well to make the case that Theomnestus in fact is not a capable thinker and is in fact to be condemned. But because of the rhetorical difficulties involved in this task, the speaker approaches it obliquely, avoiding any direct acknowledgment of Theomnestus' strength. Because of the disadvantage the speaker faces, he does not, for instance, stake any of his arguments on the quality of his own reputation. Instead of calling on the jury to remember his own public-minded beneficence, the speaker calls for them to remember that of his father. The speaker's focus on his father at the end of the

speech is thus seen to be a typically clever Lysianic maneuver, fitting a rhetorical commonplace to the specifics of the legal and rhetorical constraints that the case imposes: by calling on the jury to remember his father, the speaker reminds them of his family's services to the city (as speakers so often do) and yet does so without asking them to think about his own reputation; this reinforces the outrage that the jury is expected to feel for the slander of such a man, strengthening their resolve to convict the slanderer, while simultaneously drawing attention away from the speaker himself.

My interpretation of the speech as an attempt to undo three previous decisions makes sense of yet another strange feature of the suit, namely the timing of the suit: it is noteworthy that the speaker brought an action against Theomnestus for his defamatory remarks not immediately after Lysitheus' original suit but rather after two further lawsuits had been decided in his favor. One possible explanation for this is Todd's, building off Hillgruber, i.e. that the speaker's purpose was to preempt his opponent before Theomnestus could prosecute the speaker, as he did Dionysius, for *kakēgoria*. The value of preemption, however, is not entirely clear to me: as already noted, the jurors, if they vote in the speaker's favor, are expected to do so on the basis of the preceding three suits; that is, they are instructed and perhaps expected to defy their own previous judgments and to decide, retroactively, that Theomnestus did in fact throw away his shield and wrongly convicted men who did not. Subsequent juries would be no more bound by this jury's decision than this one is by the previous three. Why, then, should Theomnestus not attempt to carry off the same maneuver, revisiting prior suits with the goal of inducing the jury to render essentially a different decision retroactively? What we have seen in examining the speech, moreover, is not any interest in the prevention of future litigation. The effect of the speech, and the trajectory that its arguments follow, is to call earlier litigation into question. If the speaker's goal had been the forestalling of further action by Theomnestus, certainly we should not expect him to tell the jury so, but we might expect hints of concern about future litigation. The rhetorical strategy of the speech offers hints of different concerns: the speaker apparently believes that at least some of the jury will be receptive to his attempt to revisit and reevaluate prior decisions, and to do so at least partly on the basis of Theomnestus' hypocrisy. That is, the prosecutions of Lysitheus and Dionysius appear to have created an opportunity for



the speaker to hoist Theomnestus with his own petard as a hypocrite and a liar: their convictions are the very evidence on which Lysias 10 bases its claims about Theomnestus' dishonest and hypocrisy; the second and third suits, despite turning out unfavorably for the speaker's allies, thus enable the speaker to call into question the outcomes of all three suits. Whether this is why the speaker actually delayed bringing suit is of course unknowable, but it is a testament to the rhetorical skill of the speechwriter that the suit, despite its strange timing, seems on closer inspection to have come at precisely the right moment.

One further peculiarity of the speech that my interpretation of the speech may help to explain is its odd structure. The speech does not merely lack a *diēgēsis*; the relationship between facts and argument, in some sense, is the reverse of the usual. The speakers of Lysias 1, 3 and 7 all engage in a kind of re-writing of history over the course of their speeches: the speaker of Lysias 1 presents himself in a pathetic, pleading and contemptible mode in the early chapters of his speech, and gradually constructs a more commanding persona, so that he effectively becomes a different person over the course of the speech; the speaker of Lysias 3 at first states as an unequivocal fact that both he and his opponent desired the prostitute Theodotus, and yet by the later chapters of the oration the speaker, having shown himself to be Simon's true target, calls into question whether Simon ever had such feelings for the boy; in Lysias 7, the speaker, at first the non-threatening private man, becomes a liturgist eager for public praise. Lysias 10 represents a more extreme version of this pattern, in that the very goal of the rhetorical strategy is, it seems to me, to re-write the history of the suit itself: in the standard Lysianic speech, narrative supports argument; in Lysias 10, argument – the lengthy attack on Theomnestus, §6-21 – supports the construction of narrative. Thus whereas in most Lysianic speeches arguments at the opening and close of the speech bracket the narrative that sits at effectively the center of the speech, narrative at the opening and close of the speech brackets the line of argument that sit at its center.

## Conclusion

In the preceding pages I offered close readings of four of Lysias' speeches. In each case I have tried to set forth what the rhetorical strategy of the speech is and show how it unfolds. Key to this work has been my observation that, over the course of each speech, the speechwriter's handling of certain issues and themes changes. And in each case I have tried to show that these changes are best understood as both the goal and mechanism of the persuasive process: the speaker changes his mind in the process of changing the mind of the juror. In comparing how the four speeches do this, moreover, I have found common features, which I have called "Lysianic hallmarks:" discrepancies between the opening of a speech and its close; the strategic positioning of arguments; delaying tactics; and changes in characterization.

The dissertation differs from previous work on Lysias' speeches in a number of ways. My readings of the speeches and their rhetorical strategies, unlike past commentary, start from a recognition of their essential temporality, the fact that they unfold over time: I have sought to understand why a speech's parts are ordered as they are and what their ordering achieves. It is this aspect of my approach that has led me to regard inconsistency as part of the rhetorical strategy of each speech. Prior commentary tacitly, and incorrectly, assumes that a speaker's objectives and means of achieving them are – or are intended to be – essentially the same from the start of the speech to its finish. But if the components of an oration are tuned so as to address momentary rhetorical needs, as I propose they are, and if those needs change over the course of the oration, overarching coherence and logical consistency should not be a priority for the speechwriter; he should be willing to change his mind and contradict himself where he finds it expedient to do so. This flexibility is indeed evident in Lysias 1, 3, 7 and 10.

Another aspect of my work that distinguishes it from past work, excepting Wohl (2010), is my interest in showing how rhetoric operates at a variety of levels in the text simultaneously. Part of the speech's persuasive work happens at a superficial level, as when an argument is openly stated and support is offered. But like Wohl, I see rhetoric also in themes, motifs and lines of thought that develop without ever being acknowledged so openly. The speechwriter never says, and the listener may not consciously grasp, that Euphiletus has become a different man, or that the speaker of Lysias 7 repeatedly demonstrates

himself to be at the mercy of the people around him despite the advantages his wealth may afford, but the listener is nevertheless expected, it seems to me, to absorb these ideas and thereby become more receptive to the subsequent claims that depend on them. The straightforwardly stated arguments that tend to be treated as the core of the speaker's rhetoric often serve this sort of deeper persuasive function: subtle hints, insinuations or subtextual, subliminal cues develop lines of thought quite different from the ones the speaker is ostensibly developing. One reason why commentary on rhetorical strategies tends to focus on straightforwardly stated arguments and proof is that commentators have essentially taken the speaker at his word when he tells the jury what he is arguing and how he is arguing it. My study of Lysias 1, 3, 7 and 10 shows the importance of reading the speeches more skeptically.

Like Wohl, I believe that the rhetoric of a speech is best understood as the speechwriter's construction of a psychological, emotional and conceptual framework, creating for the listener a kind of mental world, what Wohl calls the *kosmos* of the speech. By opening certain lines of thought and triggering certain prejudices and associations while suppressing others, the speech leads the jury to accept a general outlook from which they will naturally or inevitably draw the conclusions that the speechwriter wishes them to draw. What the speaker openly professes to be arguing, and how he professes to argue it, comprise at best a fraction of that process; indeed, his claims can be misleading. Wohl (2010) has explored the elements of the juridical *kosmos* that undermine a speaker's rhetoric. In my readings of the speeches, however, the *kosmos* is not intended to be fully coherent, systematized or wholly present in the mind of the listener; it crops up in the text piece by piece from moment to moment. The parts do not always fit together logically, and even when they do, they do so more in the manner of a Cubist painting than in the manner of a coherent, stable system, because the constantly changing perspective of the viewer – the constantly changing rhetorical environment – constrains the speech, at different moments, to present the same thing in sometimes radically different ways. The speech's internal contradictions need not undermine the speaker's rhetoric. They can be an essential element of it, because they enable him to move himself and his listener closer to his rhetorical goals.

As a result of my attempt to integrate inconsistencies into my understanding of the persuasive process, I have taken what I believe to be a novel approach to *ēthos* and characterization in Attic oratory. Prior commentators have never, to my knowledge, considered the possibility that Lysias' characters may change over the course of a speech, let alone that those changes may be a part of the speechwriter's art. Usher hints at the possibility in his discussion of Lysias 1 when he observes how the listener's understanding of Euphiletus changes – how “Euphiletus' character suddenly reveals its other side: naive trust gives way to righteous anger” (Usher and Edwards 1985, 224) – after the affair is revealed. But for Usher the audience's changed understanding of the character merely brings to their attention a quality that was always present in the character. In Lysias 1, 3, 7 and 10, characterization changes over the course of the speech, showing the speechwriter's approach to characterization to be more varied than has been supposed. Some of these changes are of the sort that Usher describes: in all four speeches examined the speechwriter puts before the jury those aspects of the speaker that, at a particular moment, will help him make his case more persuasively; the speechwriter simultaneously suppresses or ignores aspects of the character that might at that moment be less persuasive or helpful. But even when the character is consistent, it is important to note that the audience nevertheless is induced to focus on different parts of him, and thus to think differently about him, at different times: the speaker of Lysias 7 may indeed be a retiring figure fearful of the public eye, as well as an enthusiastic, generous public servant when he is enjoined to carry out liturgies, but the speech keeps these facets of the character separate. This phenomenon – what we might call partial characterization – enables the speechwriter to tune his uses of characterization to momentary rhetorical needs. These momentary, partial characterizations sometimes add up to a complete, harmonious, unitary *ēthos*, as in Lysias 10, where the speaker's changing affect and changing manner of describing the suit do not damage the internal coherence of the character. But where it serves his purposes, the speechwriter can and does present the character of the speaker in a succession of different ways that do not “add up.” As noted above, the speaker of Lysias 7 assumes at the opening of his speech a stance of helplessness and defenselessness against his enemies' unwarranted assaults; he suggests that Nicomachus' prosecution, if successful, threatens the innocent throughout the city. This

cannot be squared with the speaker's posture later in the speech, however, where Nicomachus' suit is treated as essentially laughable, an obviously malicious and dishonest example of sycophancy, and a pristine example of prosecutorial incompetence. The speaker's incompatible attitudes towards the suit, moreover, are intertwined with the incompatible ways in which he presents himself to the jury – first as a private elite who wishes only to live a private life, and later as an eager public servant who carried out his duties with an enthusiasm that he knew would attract the attention of sycophants. But the speechwriter has more choices than to provide an *ēthos* that either is or is not internally consistent and unitary. Euphiletus furnishes an example of a character that, although neither harmonious nor unitary, nevertheless adds up to more than one coherent, internally consistent character; full appreciation of his complexities requires us to recognize how the speechwriter develops the character; Lysias gives him two distinct personae and dramatizes the events that cause the one to give way to the other.

My work differs from previous commentary also in terms of how I interpret the structure of an oration and the connections between its parts (traditionally divided into *prooimion*, *diēgēsis*, *pisteis*, *epilogos*). Commentators tend to assume that the *prooimion* sets out, or is intended to set out, a kind of road map for the speech; the promises it makes about what the speaker will argue and how he will argue it are accepted as true. Indeed, Lysias has been praised since antiquity for how well fitted his *prooimia* are to the speeches for which they are written. In the four speeches examined in the preceding pages, however, the *prooimion* is found to set out a very different sort of road map. The themes that it introduces are the themes that the speech pursues, but the handling of those themes changes considerably. The *prooimion*'s promises turn out, in a way, to be false, as the *prooimion* is revealed to give an unreliable impression of what the speaker will argue, how he will argue it, and how, ultimately, he wishes to present himself to the jury.

In terms of how the parts of the speech relate to one another, I have found that connections of a more complex sort than are typically observed. Commentary on the relationship between *diēgēsis* and *pisteis* in Lysias usually focuses on how a *pistis* recalls the evidence produced in the narrative; in Lysias' narratives, details that seem unimportant in the *diēgēsis* are in the *pisteis* later revealed to be essential

evidence. In the *diēgēsis* of Lysias 1, for instance, Euphiletus mentions but calls no special attention to the departure of Sostratus after dinner. Later in the speech, the departure is revealed to be conclusive evidence that Euphiletus did not entrap Eratosthenes. But the *pisteis* of a speech can draw on or grow out of the *diēgēsis* in a more subtle way. As I have shown, the *diēgēsis* of Lysias 1 imbues Euphiletus with a kind of civic authority. That authority supports the commanding, imperious posture he adopts after the *diēgēsis* and thereby the arguments he makes about the law. Likewise, in each episode of the *diēgēsis* of Lysias 3, the narrator subtly redirects Simon's attention from Theodotus to himself, suggesting that he, not Theodotus, was Simon's true target. This pattern is crucial evidence later in the speech when the speaker finally makes more explicitly the claim that he, not Theodotus, was Simon's interest and victim, and that Simon was never authentically interested in the boy. In neither speech are these connections between *diēgēsis* and *pisteis* acknowledged, but they are nevertheless critical components of the rhetoric of the speech, the *kosmos* by which the speechwriter guides the listener's thinking.

Lysias' speeches do not offer the sort of self-conscious, declared theories of persuasion that for Schiappa and Cole constitute "full-blown" theoretical rhetoric, but the patterns that I have found in Lysias 1, 3, 7 and 10 do seem to imply a theory of persuasion, or at least a theory of the mind of the juror. The rhetoric of the speeches seems to expect an audience of listeners who will be either incapable of or uninterested in drawing the kinds of connections that would bring to light the contradictions present in the text. And yet there seems simultaneously to be an expectation that the speech's listeners will also draw more connections, and so be more influenced, than they realize, as a result of their receptiveness to essentially subliminal or unconscious forms of persuasion.

## Bibliography

- Avery, Harry C. 1966. "Lysias 12. 65 - Text Crit." *Classical Philology* 61 (4) (October 1): 257–58.
- . 1991. "Was Eratosthenes the Oligarch Eratosthenes the Adulterer?" *Hermes* 119 (3) (January 1): 380–84.
- Azuike, G. A. 1961. "Lysias Defends His Citizenship." *Greece & Rome* 8 (1) (March 1): 27.
- Bakewell, Geoff. 1999. "Lysias 12 and Lysias 31: Metics and Athenian Citizenship in the Aftermath of the Thirty." *Greek, Roman and Byzantine Studies*. 40 (1): 5.
- Barnes, Jonathan. 1982. *Aristotle*. Oxford; New York: Oxford University Press.
- Bateman, John Jay. 1958a. "A Study of the Arguments in the Speeches of Lysias". Ph.D., United States -- New York: Cornell University.
- <http://search.proquest.com.proxy.library.cornell.edu/pqdtft/docview/301877878/citation/14158BF76C52CC8450/4?accountid=10267>.
- . 1958b. "Lysias and the Law." *Transactions and Proceedings of the American Philological Association* 89 (January 1): 276–85. doi:10.2307/283681.
- . 1962. "Some Aspects of Lysias' Argumentation." *Phoenix* 16 (3) (October 1): 157–77.
- doi:10.2307/1086812.
- Berdolet, Fr. 1920. "Zu Lysias ΠΕΡΙ ΤΟΥ ΣΗΚΟΥ." *Hermes* 55 (3) (July 1): 321–23.
- Bers, Victor. 2009. *Genos Dikanikon: Amateur and Professional Speech in the Courtrooms of Classical Athens*. Washington, D.C.; Cambridge, Mass.: Center for Hellenic Studies, Trustees for Harvard University ; Distributed by Harvard University Press.
- Blanshard, Alastair J. L. 2004. "What Counts as the Demos? Some Notes on the Relationship between the Jury and 'The People' in Classical Athens." *Phoenix* 58 (1/2) (April 1): 28–48.
- doi:10.2307/4135195.
- Blass, Friedrich. 1887. *Die attische Beredsamkeit*. Leipzig: B.G. Teubner.
- Boegehold, Alan L, and Adele C Scafuro, ed. 1994. *Athenian Identity and Civic Ideology*. Baltimore: Johns Hopkins University Press.



- Boegehold, Alan L. 1972. "The Establishment of a Central Archive at Athens." *American Journal of Archaeology* 76 (1) (January 1): 23–30. doi:10.2307/503608.
- Boegehold, Alan L., John McK. Camp, Margaret Crosby, Mabel Lang, David R. Jordan, and Rhys F. Townsend. 1995. "The Lawcourts at Athens: Sites, Buildings, Equipment, Procedure, and Testimonia." *The Athenian Agora* 28 (January 1): iii–256. doi:10.2307/3602008.
- Bolonyai, Gábor. 2007. "The Earrings of Polemarchus' Wife Revisited." *Hermes* 135 (1): 34–42.
- . 2008. "A Numbers Game : An Interpretation of Lysias 17." *Classical Quarterly* 58 (2): 491–99.
- Bonner, Robert Johnson. 1967. *Aspects of Athenian Democracy*. New York: Russell & Russell.
- Borthwick, E. K. 1990. "Two Emotional Climaxes in Lysias' 'Against Eratosthenes.'" *The Classical World* 84 (1) (September 1): 44–46. doi:10.2307/4350719.
- Bristol, George Prentice. 1892. *Ten selected orations of Lysias*. Boston: Allyn and Bacon.
- Büchler, Otto. 1936. "Die Unterscheidung der redenden Personen bei Lysias; eine stilistische Untersuchung der Diegesis." Heidelberg: F. Bilabel.
- Cairns, Douglas L. 1996. "Hybris, Dishonour, and Thinking Big." *The Journal of Hellenic Studies* / 116: 1.
- Cairns, Douglas L, and Ronald A Knox. 2004. *Law, Rhetoric and Comedy in Classical Athens: Essays in Honour of Douglas M. MacDowell*. Classical Press of Wales ; Distributor in the United States of America: David Brown Book Co.
- Caplan, Harry, Richard Leo Enos, Mark James, Harold Barrett, Lois Agnew, and Edward P. J. Corbett. 1997. "The Classical Tradition: Rhetoric and Oratory." *Rhetoric Society Quarterly* 27 (2) (April 1): 7–38.
- Carawan, Edwin. 1993. "The Tetralogies and Athenian Homicide Trials." *The American Journal of Philology* 114 (2) (July 1): 235–70. doi:10.2307/295314.
- . 2002. "The Athenian Amnesty and the 'Scrutiny of the Laws.'" *The Journal of Hellenic Studies* 122 (January 1): 1–23. doi:10.2307/3246202.

- . 2006. "Amnesty and Accoutings for the Thirty." *The Classical Quarterly* 56 (1) (May 1): 57–76.
- . 2007. *Oxford Readings in the Attic Orators*. Oxford; New York: Oxford University Press.  
<http://site.ebrary.com/id/10271557>.
- . 2010. "The Case against Nikomachos." *Transactions of the American Philological Association* 140 (1): 71–95.
- Carey, Christopher. 1988. "A Note on Torture in Athenian Homicide Cases." *Historia: Zeitschrift Für Alte Geschichte* 37 (2) (June 1): 241–45.
- . 1989. *Selected speeches*. Cambridge: Cambridge University Press.
- . 1990. "Structure and Strategy in Lysias XXIV." *Greece & Rome* 37 (1) (April 1): 44–51.
- . 1994a. "'artless' Proofs in Aristotle and the Orators\*." *Bulletin of the Institute of Classical Studies* 39 (1): 95–106. doi:10.1111/j.2041-5370.1994.tb00454.x.
- . 1994b. "Legal Space in Classical Athens." *Greece & Rome* 41 (2) (October 1): 172–86.
- . 1995. "Rape and Adultery in Athenian Law." *The Classical Quarterly* 45 (2) (January 1): 407–17.
- . 1996. "Nomos in Attic Rhetoric and Oratory." *The Journal of Hellenic Studies* 116 (January 1): 33–46. doi:10.2307/631954.
- . 2007. *Lysiae orationes cum fragmentis*. Oxford: Clarendon Press.
- Cartledge, Paul, F. D Harvey, and G. E. M De Ste. Croix. 1985. *Crux: Essays Presented to G.E.M. de Ste. Croix on His 75th Birthday*. Exeter: Duckworth in association with Imprint Academic.
- Cartledge, Paul, Paul Millett, and S. C Todd. 1990. *Nomos: Essays in Athenian Law, Politics, and Society*. Cambridge: Cambridge University Press.
- Christ, Matthew R. 1990. "Liturgy Avoidance and Antidosis in Classical Athens." *Transactions of the American Philological Association (1974-)* 120 (January 1): 147–69. doi:10.2307/283983.
- . 1998. "Legal Self-Help on Private Property in Classical Athens." *The American Journal of Philology* 119 (4) (December 1): 521–45.

- Christ, Matthew Robert. 2006. *The Bad Citizen in Classical Athens*. Cambridge: Cambridge University Press.
- Cohen, David. 1991. *Law, Sexuality, and Society: The Enforcement of Morals in Classical Athens*. Cambridge: Cambridge University Press.
- . 1993. "Rhetoric, Morals, and the Rule of Law in Classical Athens." *Zeitschrift Der Savigny-Stiftung Für Rechtsgeschichte* 110: 1–13.
- Cole, Thomas. 1991. *The Origins of Rhetoric in Ancient Greece*. Baltimore: Johns Hopkins University Press.
- Craik, E. M. 1999. "Mantitheus of Lysias 16: Neither Long-Haired nor Simple-Minded." *CLASSICAL QUARTERLY* 49 (2): 626–28.
- Davidson, James N. 1998. *Courtesans & Fishcakes: The Consuming Passions of Classical Athens*. New York: St. Martin's Press.
- Denniston, J. D. 1954. *The Greek Particles*. Oxford: Clarendon Press.
- Devries, William Levering. 1892. "Ethopoia." Baltimore: J. Murphy & Co.
- Dionysius, Germaine Aujac, and Maurice Lebel. 1978. *Opuscles rhétoriques*. Paris: Les Belles Lettres.
- Dobson, J. F. 1967. *The Greek Orators*. Freeport, N.Y.: Books for Libraries Press.
- Dorjahn, Alfred P. 1937. "Intimidation in Athenian Courts." *Classical Philology* 32 (4): 341–48.
- . 1941. "On the Athenian Anakrisis." *Classical Philology* 36 (2): 182–85.
- Dorjahn, Alfred Paul. 1935. "Anticipation of Arguments in Athenian Courts." *Transactions and Proceedings of the American Philological Association* 66 (January 1): 274–95.  
doi:10.2307/283300.
- Dover, K. J. 1968. *Lysias and the Corpus Lysiacum*. Berkeley: University of California Press.
- . 1974. *Greek Popular Morality in the Time of Plato and Aristotle*. Berkeley: University of California Press.

- Edwards, Michael J. 2000. "Antiphon and the Beginnings of Athenian Literary Oratory." *Rhetorica: A Journal of the History of Rhetoric* 18 (3) (August 1): 227–42. doi:10.1525/rh.2000.18.3.227.
- . 2005. "A Note on Lysias 1.22." *Exemplaria Classica* 9: 7–9.
- Edwards, Michael, and Stephen Usher. 1985. *Antiphon & Lysias*. Chicago: Bolchazy Carducci.
- Fisher, N. R. E. 1976. "Hybris and Dishonour: I." *Greece & Rome Greece and Rome* 23 (02): 177–93.
- . 1979. "Hybris and Dishonour: II." *Greece & Rome Greece and Rome* 26 (01): 32.
- . 1992. *Hybris: A Study in the Values of Honour and Shame in Ancient Greece*. Warminster, England: Aris & Phillips.
- Fogelmark, Staffan. 1979. "A Troublesome Antithesis: Lysias 12.88." *Harvard Studies in Classical Philology* 83 (January 1): 109–41. doi:10.2307/311097.
- . 1981. "Lysias 12,37: An Unexplained Case of Κακοφωνία." *Hermes Hermes* 109 (3): 294–300.
- Forman, L. L. 1896. "Ethopoia in Lysias." *The Classical Review* 10 (2) (March 1): 105–6.
- Foxhall, Lin, and A. D. E. Lewis. 1996. *Greek Law in Its Political Setting: Justifications Not Justice*. Oxford; New York: Clarendon Press ; Oxford University Press.
- Fredal, James. 2001. "The Language of Delivery and the Presentation of Character: Rhetorical Action in Demosthenes' against Meidias." *Rhetoric Review* 20 (3/4) (October 1): 251–67.
- Gagarin, Michael. 1990. "The Nature of Proofs in Antiphon." *Classical Philology* 85 (1) (January 1): 22–32.
- . 1996. "The Torture of Slaves in Athenian Law." *Classical Philology* 91 (1) (January 1): 1–18.
- . 2002. *Antiphon the Athenian: Oratory, Law, and Justice in the Age of the Sophists*. Austin: University of Texas Press.
- . 2003. "Telling Stories in Athenian Law." *Transactions of the American Philological Association* 133 (2): 197–207.
- , and David Cohen. 2005. *The Cambridge Companion to Ancient Greek Law*. Cambridge: Cambridge University Press.

- Gagarin, Michael, and Douglas M MacDowell. 1998. *Antiphon & Andocides*. Austin: University of Texas Press.
- Gaines, Robert. 1979. "Identification and Redemption in Lysias' Against Eratosthenes." *Communication Studies* 30 (3): 199–210.
- Gernet, Louis, and M Bizos. 1992. *Discours*. Paris: Les Belles lettres.
- Goldhill, Simon, and Robin Osborne. 2006. *Rethinking Revolutions through Ancient Greece*. Cambridge, UK; New York: Cambridge University Press.
- Grau, Peter, and Lysias. 1972. *Prooemiengestaltung bei Lysias*. Bonn: Habelt.
- Greenwood, James. 1972. "The Legal Setting of Attic Oratory." *Communication Studies* 23 (3): 181–87.
- Groeneboom, P. 1924. "Ad Lysiae orationem primam." *Mnemosyne* 52 (3): 293–98.
- Hall, Edith. 1995. "Lawcourt Dramas: The Power of Performance in Greek Forensic Oratory." *Bulletin of the Institute of Classical Studies* 40 (1): 39–58.
- Hansen, Mogens Herman. 1975. *Eisangelia: The Sovereignty of the People's Court in Athens in the Fourth Century B.C. and the Impeachment of Generals and Politicians*. Odense: Odense Universitetsforlag.
- . 1980. "Eisangelia in Athens: A Reply." *The Journal of Hellenic Studies* 100 (January 1): 89–95. doi:10.2307/630734.
- Harding, P. 1987. "Rhetoric and Politics in Fourth-Century Athens." *Phoenix* 41 (1) (April 1): 25–39. doi:10.2307/1088600.
- Harris, Edward M. 1990. "Did the Athenians Regard Seduction as a Worse Crime Than Rape?" *The Classical Quarterly* 40 (2) (January 1): 370–77.
- Harris, W. V. 1997. "Lysias III and Athenian Beliefs about Revenge." *The Classical Quarterly* 47 (2) (January 1): 363–66.
- Harrison, A. R. W. 1968. *The Law of Athens*. Oxford: Clarendon P.
- Harrison, A. R. W. 1955. "Law-Making at Athens at the End of the Fifth Century B. C." *The Journal of Hellenic Studies* 75 (January 1): 26–35. doi:10.2307/629166.

- Heitsch, Ernst. 1961. "Recht und Taktik in der 7. Rede des Lysias: ein Beitrag zur griechischen Rechtsgeschichte." *Museum Helveticum* 18. <http://retro.seals.ch/digbib/view?rid=mhl-001:1961:18::290>.
- Herman, Gabriel. 1993. "Tribal and Civic Codes of Behaviour in Lysias I." *The Classical Quarterly* 43 (2) (January 1): 406–19.
- Hesk, Jon. 2000. *Deception and Democracy in Classical Athens*. Cambridge: Cambridge University Press.
- Hillgruber, Michael, and Lysias. 1988. *Die zehnte Rede des Lysias: Einleitung, Text und Kommentar mit einem Anhang über die Gesetzesinterpretationen bei den attischen Rednern*. Berlin; New York: W. de Gruyter.
- Hude, Karl. 1913. *Lysiae Orationes*. Oxonii: e Typographeo Clarendoniano.
- Hunter, Virginia J. 1994. *Policing Athens: Social Control in the Attic Lawsuits, 420-320 B.C.* Princeton, N.J.: Princeton University Press.
- Jebb, R. C. 1893. *The Attic Orators from Antiphon to Isaeos*. New York: Russell & Russell.
- Johnson, William A. 2000. "Toward a Sociology of Reading in Classical Antiquity." *The American Journal of Philology* 121 (4) (December 1): 593–627.
- Kennedy, George A. 1958. "The Oratory of Andocides." *Amerjphil The American Journal of Philology* 79 (1): 32–43.
- . 1959. "Focusing of Arguments in Greek Deliberative Oratory." *Tranprocamerphil Transactions and Proceedings of the American Philological Association* 90: 131–38.
- . 1963. *The Art of Persuasion in Greece*. Princeton, N.J.: Princeton University Press.
- . 1994. *A New History of Classical Rhetoric*. Princeton, N.J.: Princeton University Press.
- Kurihara, Asako. 2003. "Personal Enmity as a Motivation in Forensic Speeches." *The Classical Quarterly* 53 (2). New Series (November 1): 464–77.
- Laird, A. G. 1911. "Lysias 19. 22 and 18. 14." *Classical Philology* 6 (4) (October 1): 481–83.

- Lamb, W. R. M. 1930. *Lysias*. London; New York: W. Heinemann ; G.P. Putnam.
- Lamers, Han, and Adriaan Rademaker. 2007. "Talking about Myself: A Pragmatic Approach to the Use of Aspect Forms in Lysias 12.4-19." *The Classical Quarterly* 57 (2) (December 1): 458–76.
- Lanni, Adriaan. 1999. "Precedent and Legal Reasoning in Classical Athenian Courts: A Noble Lie?" *The American Journal of Legal History* 43 (1) (January 1): 27–51. doi:10.2307/846129.
- . 2005. "Relevance in Athenian Courts." In *The Cambridge Companion to Ancient Greek Law*, edited by Michael Gagarin and David Cohen, 112–28. Cambridge: Cambridge University Press.
- . 2006. *Law and Justice in the Courts of Classical Athens*. Cambridge: Cambridge University Press.
- Lanni, Adriaan M. 1997. "Spectator Sport or Serious Politics? Οἱ Περίεστηκότες and the Athenian Lawcourts." *Jhellenicstudies The Journal of Hellenic Studies* 117: 183–89.
- Lateiner, Donald. 1982. "'The Man Who Does Not Meddle in Politics': A Topos in Lysias." *The Classical World* 76 (1) (September 1): 1–12. doi:10.2307/4349424.
- Lateiner, Donald Gray. 1971. "Lysias and Athenian Politics". Stanford University.
- Liddel, Peter. 2007. *Civic Obligation and Individual Liberty in Ancient Athens*. Oxford: Oxford University Press.
- Loening, Thomas C. 1981. "The Autobiographical Speeches of Lysias and the Biographical Tradition." *Hermes* 109 (3) (January 1): 280–94.
- Loomis, W. T. 1972. "The Nature of Premeditation in Athenian Homicide Law." *The Journal of Hellenic Studies* 92 (January 1): 86–95. doi:10.2307/629975.
- Loraux, Nicole. 1986. *The invention of Athens: the funeral oration in the classical city*. Cambridge, Mass.: Harvard University Press.
- . 1993. *The children of Athena: Athenian ideas about citizenship and the division between the sexes*. Princeton, N.J.: Princeton University Press.
- . 2000. *Born of the Earth: Myth and Politics in Athens*. Ithaca: Cornell University Press.
- . 2002. *The Divided City: On Memory and Forgetting in Ancient Athens*. New York: Zone Books.

- MacDowell, Douglas M. 1990. *Against Meidias: oration 21*. Oxford [England]; New York: Clarendon Press ; Oxford University Press.
- MacDowell, Douglas M. 1976. "'Hybris' in Athens." *Greece & Rome* 23 (1) (April): 14–31.
- . 1978. *The Law in Classical Athens*. Ithaca, N.Y.: Cornell University Press.
- . 1985. "The Length of the Speeches on the Assessment of the Penalty in Athenian Courts." *The Classical Quarterly* 35 (2) (January 1): 525–26.
- Martin, Richard. 1993. "Review." *Classical Philology* 88 (1) (January 1): 77–84.
- Menu, Michel. 2000. *Jeunes et vieux chez Lysias: l'akolasia de la jeunesse au IV<sup>e</sup> siècle av. J.-C.* Rennes: Presses universitaires de Rennes.
- Mirhady, David C. 2002. "Athens' Democratic Witnesses." *Phoenix* 56 (3/4) (October 1): 255–74.  
doi:10.2307/1192600.
- . 2004. "Contracts in Athens." In *Law, Rhetoric and Comedy in Classical Athens: Essays in Honour of Douglas M. MacDowell*, edited by D. L. Cairns and Ronald A. Knox. Swansea: Classical Press of Wales.
- Missiou, Anna. 1992. *The Subversive Oratory of Andokides: Politics, Ideology, and Decision-Making in Democratic Athens*. Cambridge: Cambridge University Press.
- Morgan, Gareth. 1982. "Euphiletos' House: Lysias I." *Transactions of the American Philological Association* (1974-) 112 (January 1): 115–23. doi:10.2307/284074.
- Muir, John Victor. 2002. *The works and fragments*. London: Bristol classical press.
- Murphy, T. M. 1992. "Lysias 25 and the Intractable Democratic Abuses." *The American Journal of Philology* 113 (4) (December 1): 543–58. doi:10.2307/295539.
- Murphy, Thomas Michael. 1986. "Forensic Representation of Oligarchs in the Corpus Lysiacum (athens, Greece)". Ph.D., The University of Texas at Austin.  
<http://search.proquest.com/pqdtft/docview/303521824/abstract/14153232F30119A52D8/1?accountid=10267>.



- Ober, Josiah. 1989. *Mass and Elite in Democratic Athens: Rhetoric, Ideology, and the Power of the People*. Princeton, N.J.: Princeton University Press.
- . 2010. "Wealthy Hellas." *Transactions of the American Philological Association* 140 (2): 241–86.
- Osborne, Robin. 1985. "Law in Action in Classical Athens." *The Journal of Hellenic Studies* 105 (January 1): 40–58. doi:10.2307/631521.
- . 2007. *Debating the Athenian Cultural Revolution: Art, Literature, Philosophy, and Politics, 430-380 BC*. Cambridge, UK; New York: Cambridge University Press.
- . 2010. *Athens and Athenian Democracy*. New York: Cambridge University Press.
- Papillion, Terry. 1995. "Isocrates' Techne and Rhetorical Pedagogy." *Rhetoric Society Quarterly* 25 (January 1): 149–63.
- Parker, Robert. 1996. *Athenian Religion: A History*. Oxford: Clarendon Press.
- Pearson, L. 1964. "Lysias VII 12." *Mnemosyne* 17 (1) (January 1): 78–79.
- Phillips, David D. 2000. "Homicide, Wounding, and Battery in the Fourth-Century Attic Orators". University of Michigan.
- . 2007. "'Trauma Ek Pronoias' in Athenian Law." *The Journal of Hellenic Studies* 127 (January 1): 74–105.
- Porter, John R. 2007 [1997]. "Adultery by the Book: Lysias 1 (On the Murder of Eratosthenes) and Comic Diēgēsis." In *Oxford Readings in the Attic Orators*, edited by Edwin Carawan, 60–88. Oxford: Oxford University Press.
- Prince, Susan. 2002. "Review." *The Classical Journal* 97 (3) (February 1): 294–98.
- Rahe, Paul A. 1984. "The Primacy of Politics in Classical Greece." *The American Historical Review* 89 (2) (April 1): 265–93. doi:10.2307/1862553.
- Rhodes, P. J. 1972. *The Athenian Boule*. Oxford: Clarendon Press.
- . 2004. *Athenian Democracy*. New York: Oxford University Press.

- Rhodes, P. J. 1979. "ΕΙΣΑΓΓΕΛΙΑ in Athens." *The Journal of Hellenic Studies* 99 (January 1): 103–14.  
doi:10.2307/630635.
- . 1980. "Athenian Democracy after 403 B.C." *The Classical Journal* 75 (4) (April 1): 305–23.
- . 1986. "Political Activity in Classical Athens." *The Journal of Hellenic Studies* 106 (January 1): 132–44. doi:10.2307/629648.
- . 1991. "The Athenian Code of Laws, 410-399 B. C." *The Journal of Hellenic Studies* 111 (January 1): 87–100. doi:10.2307/631889.
- . 2001a. "Public Documents in the Greek States: Archives and Inscriptions, Part I." *Greece & Rome* 48 (1). Second Series (April 1): 33–44.
- . 2001b. "Public Documents in the Greek States: Archives and Inscriptions, Part II." *Greece & Rome* 48 (2). Second Series (October 1): 136–53.
- Robertson, Noel. 1990. "The Laws of Athens, 410-399 BC: The Evidence for Review and Publication." *The Journal of Hellenic Studies* 110 (January 1): 43–75. doi:10.2307/631732.
- Roy, J. 1997. "An Alternative Sexual Morality for Classical Athenians." *Greece & Rome* 44 (1) (April 1): 11–22.
- . 1999. "'Polis' and 'Oikos' in Classical Athens." *Greece & Rome* 46 (1). Second Series (April 1): 1–18.
- Rubinstein, Lene. 2000. *Litigation and Cooperation: Supporting Speakers in the Courts of Classical Athens*. Stuttgart: F. Steiner Verlag.
- . 2004. "Stirring Up Dicastic Anger." In *Law, Rhetoric and Comedy in Classical Athens: Essays in Honor of Douglas M. MacDowell*, edited by Cairns Douglas L. and Knox Ronald A. Swansea: Classical Press of Wales.
- Sanders, Kirk R. 2008. "Lysias Or. 1 : Two Critical Notes." *Philologus* 152 (1): 138–43.
- Schiappa, Edward. 1999. *The Beginnings of Rhetorical Theory in Classical Greece*. New Haven: Yale University Press.

- Schmitz, Thomas A. 2000. "Plausibility in the Greek Orators." *The American Journal of Philology* 121 (1) (April 1): 47–77.
- Scott, John A. 1916. "Lysias on the Sacred Olive." *The Classical Journal* 11 (4) (January 1): 239–40.
- Sealey, Raphael. 1983. "The Athenian Courts for Homicide." *Classical Philology* 78 (4) (October 1): 275–96.
- . 1987. *The Athenian Republic: Democracy or the Rule of Law?* University Park: Pennsylvania State University Press.
- Sokol, Ronald P. 1971. "The Political Trial: Courtroom as Stage, History as Critic." *New Literary History* 2 (3) (April 1): 495–516. doi:10.2307/468335.
- Strauss, Barry S. 1987. *Athens after the Peloponnesian War: Class, Faction, and Policy, 403-386 BC*. Ithaca, N.Y.: Cornell University Press.
- . 1993. *Fathers and Sons in Athens: Ideology and Society in the Era of the Peloponnesian War*. Princeton, N.J.: Princeton University Press.
- Taran, Leonardo. 1996. "Lysias Or. 1.23-24 and 41-42." *Greek, Roman and Byzantine Studies* 37 (2): 145–48.
- Todd, S. C. 1985. "Athenian Internal Politics, 403-395 BC with Particular Reference to the Speeches of Lysias." University of Cambridge.
- . 1990. "Lady Chatterley's Lover and the Attic Orators: The Social Composition of the Athenian Jury." *The Journal of Hellenic Studies* 110 (January 1): 146–73. doi:10.2307/631737.
- . 1993. *The Shape of Athenian Law*. Oxford: Clarendon.
- . 2007. *A Commentary on Lysias, Speeches 1-11*. Oxford: Oxford University Press.
- Usher, Stephen. 1965. "Individual Characterisation in Lysias." *Eranos* 63: 99–119.
- . 1999. *Greek Oratory: Tradition and Originality*. New York: Oxford University Press.

- . 2004. "Lysias for Pleasure?" In *Law, Rhetoric and Comedy in Classical Athens: Essays in Honour of Douglas M. MacDowell*, edited by Douglas L. Cairns and Ronald A. Knox, 113–22. Swansea: Classical Press of Wales.
- . 2010. "Apostrophe in Greek Oratory." *Rhetorica: A Journal of the History of Rhetoric* 28 (4) (November 1): 351–62. doi:10.1525/RH.2010.28.4.351.
- Voegelin, Walter. 1943. "Die Diabole bei Lysias ..." Basel: Druck von B. Schwabe & Co.
- Vollgraff, W. 1950. "Observations Sur Deux Discours de Lysias." *Mnemosyne* 3 (2) (January 1): 115–22.
- Walbank, Michael B. 1982. "The Confiscation and Sale by the Poletai in 402/1 B. C. of the Property of the Thirty Tyrants." *Hesperia: The Journal of the American School of Classical Studies at Athens* 51 (1) (January 1): 74–98. doi:10.2307/147854.
- Weissenberger, Michael. 2003. "Lysias 1905-2000." *Lustrum* 45: 7–166.
- Weissenberger, Michael, and Lysias. 1987. *Die Dokimasiereden des Lysias (orr. 16, 25, 26, 31)*. Frankfurt am Main: Athenäum.
- Wohl, Victoria. 2010a. *Law's Cosmos: Juridical Discourse in Athenian Forensic Oratory*. Cambridge [U.K.]; New York, N.Y.: Cambridge University Press.
- . 2010b. "A Tragic Case of Poisoning: Intention Between Tragedy and the Law." *Transactions of the American Philological Association (1974-)* 140 (1) (April 1): 33–70.
- Wolpert, Andrew. 2001. "Lysias 1 and the Politics of the Oikos." *The Classical Journal* 96 (4) (April 1): 415–24.
- . 2002a. "Lysias 18 and Athenian Memory of the Civil War." *Transactions of the American Philological Association* 132: 109–26.
- . 2002b. *Remembering Defeat: Civil War and Civic Memory in Ancient Athens*. Baltimore: Johns Hopkins University Press.
- Wooten, Cecil W. 1988. "The Earrings of Polemarchus' Wife (Lysias 12.19)." *The Classical World* 82 (1) (September 1): 29–31. doi:10.2307/4350261.

- Worthington, Ian. 1989. "The Duration of an Athenian Political Trial." *The Journal of Hellenic Studies* 109 (January 1): 204–7. doi:10.2307/632054.
- . 1992. *A Historical Commentary on Dinarchus: Rhetoric and Conspiracy in Later Fourth-Century Athens*. Ann Arbor: University of Michigan Press.
- . 1993. "Once More, the Client/Logographos Relationship." *The Classical Quarterly* 43 (1) (January 1): 67–72.
- . 2003. "The Length of an Athenian Public Trial: A Reply to Professor MacDowell." *Hermes* 131 (3) (January 1): 364–71.
- Yunis, Harvey. 2013. "Political Uses of Rhetoric in Democratic Athens." In *The Greek Polis and the Invention of Democracy*, edited by Johann P. Arnason, Kurt A. Raaflaub, and Peter Wagner, 144–62. John Wiley & Sons.
- <http://onlinelibrary.wiley.com.proxy.library.cornell.edu/doi/10.1002/9781118561768.ch6/summary>.